

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1160**

In re the Estate of: Joann Roselia Gregory, aka JoAnn R. Gregory
and aka JoAnn Gregory, Deceased.

**Filed June 21, 2021
Affirmed
Slieter, Judge**

Scott County District Court
File No. 70-PR-20-9342

Kiara Kraus-Parr, Kraus-Parr, Morrow & Weber, Grand Forks, North Dakota; and

Timothy C. Lamb (*pro hac vice*), Lamb Law LLC, Grand Forks, North Dakota (for
appellants Jeff and Ron Gregory)

Anton Cheskis, Huemoeller, Gontarek & Cheskis PLC, Prior Lake, Minnesota (for
respondent Judith Vogel)

Considered and decided by Slieter, Presiding Judge; Johnson, Judge; and Hooten,
Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

The district court approved the sale of decedent's farmstead by respondent-personal representative. Appellants argue that the sale was not commercially reasonable and that they should have been given an opportunity to buy the property, and the district court therefore erred. Because the district court did not err in finding the sale price as

commercially reasonable and because appellants have no other legal basis upon which to object to the sale, we affirm.

FACTS

This matter involves the sale of decedent Joann Roselia Gregory's farmstead property in Jordan, MN of approximately 95 acres (the property). The decedent instructed by her will that the property, due to her husband predeceasing her, would become part of the residue of her estate and be devised to her three children. The three children are respondent Judith Vogel and appellants Ron Gregory and Jeff Gregory.¹ Respondent was appointed personal representative of the estate by order of the district court on March 14, 2019. Appellants were living in the house located on the homestead with the decedent at the time of her death.

On May 1, 2020, respondent entered into a contract with real estate agent Randy Kubes to sell the property. The property included the house and numerous outbuildings which together comprised a functioning dairy operation and included tillable acres. Respondent executed an agreement on May 13, 2020, for the sale price of \$1,150,000. Appellants communicated to respondent that they were not in favor of selling the property and hired counsel to contest the sale. It was also at this time that appellants, for the first time since respondent's appointment as the personal representative and despite multiple inquiries from respondent asking what they desired with regard to the property, expressed an interest in purchasing the property.

¹ Also referred to in the record interchangeably as "Ronald Gregory" and "Jeffrey Gregory."

Following an evidentiary hearing on respondent's motion to confirm the sale, the district court concluded that that respondent "in her capacity as the Personal Representative in this matter, ha[d] acted fairly and reasonably in all of her dealings concerning the sale of the property," that she had "acted within her reasonable judgment for completely proper motives," and that the \$1,150,000 purchase price was "commercially reasonable." The district court approved the sale. This appeal follows.

DECISION

"An appellate court reviews a district court's findings of fact concerning wills and trusts under a clearly erroneous standard and reviews a district court's conclusions of law de novo." *In re Estate of Short*, 933 N.W.2d 533, 537 (Minn. App. 2019). "A finding is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake has been made." *In re Estate of Neuman*, 819 N.W.2d 211, 215 (Minn. App. 2012).

"A personal representative is a fiduciary who . . . is under a duty to settle and distribute the estate of the decedent in accordance with the terms of any probated and effective will and applicable law, and as expeditiously and efficiently as is consistent with the best interests of the estate." Minn. Stat. § 524.3-703(a) (2020). In doing so, and so long as doing so is "reasonably for the benefit of the interested persons," the personal representative may "sell, mortgage, or lease any real or personal property of the estate." Minn. Stat. § 524.3-715(23) (2020). Appellants argue that the district court erred by finding respondent's sale of the property to be commercially reasonable and by concluding that respondent did not have to accommodate appellants' expressed desire to purchase the

property.² We consider each argument and conclude the district court did not err in approving the sale of the property.

Commercially Reasonable

Appellants allege that the personal representative's failure to obtain an appraisal and failure to list the property on MLS (a nationwide listing service) demonstrate a lack of "good faith and fair dealing," and that the district court erred "when it found that the sale price and method of sale . . . [to be] commercially reasonable." Whether the sale of estate property is "commercially reasonable" is a question of fact. *In re Estate of King*, 668 N.W.2d 6, 10 n. 1 (Minn. App. 2003). The record supports the district court's finding that the sale was commercially reasonable.

Each party presented testimony from a real estate agent, with Randy Kubes testifying for respondent and Yvonne Perkins testifying for appellants. In summary, each realtor testified that the sales price of \$1,150,000 was reasonable. Kubes testified that he was familiar with the property and had worked with the family on the sale of an adjoining piece of land in the past. He testified that he had listed the property at \$1,250,000—which he described as a "fair price that would be able to get it [sold] within six months"—but that the ultimate sale price was "fair and commercially reasonable." When asked about the

² Appellants separately argue that "[t]he lower court erred by ordering the estate to be divided by one-third each to the heirs because such a finding of fact was clearly outside the scope of the petition to sell the farmstead." We do not address this claim because the district court's order contained no such provision. The portion of the order referred to by appellants was contained within the district court's findings of fact. A court's findings of fact are not an order. Minn. R. Civ. P. 52.01; *see* Minn. Stat. § 524-1-304(a)(2020) (noting that, generally, probate proceedings are governed by the rules of civil procedure).

reasonableness of appellants' suggested sale price—\$1,500,000—Kubes testified that such a price was “futuristic” and “wouldn’t be a fair price in today’s market,” and that “it would take some time to get it sold for that.” Kubes additionally testified that he did not think he would have received any higher offers if they had waited or listed the property on MLS, and that he had strategic reasons for not doing so. Specifically, Kubes opined that when listing on MLS there is “always [the] concern . . . that you put it out on the open market and it doesn’t get viewed as well as you think it might, and then the [current] high bidder starts to become in control of the transaction a little bit more.”

Perkins, though admitting that she “ha[d] not done a lot of work” related to the property, indicated that \$1,150,000 for the property “[wa]sn’t a bad price.” Perkins testified that, though she had previously identified a buyer at a higher purchase price, that potential buyer was no longer interested because of the COVID-19 pandemic. Furthermore, though Perkins testified that an MLS listing could be useful as it opened up sales to a “huge market of buyers,” she admitted that she did not list all her properties on MLS.

The district court, apparently finding both realtors to be credible, relied on their testimony in judging the “commercial reasonableness” of the sale. The district court found that “[w]hile [appellants] make allegations as to what [respondent] could have done differently in listing the farmstead, there is no evidence that [respondent]’s conduct in determining the value of the farmstead was unreasonable,” and found that respondent “obtained a fair and reasonable price for the property according to both real estate experts.”

The district court additionally found appellants' claims of a higher fair market value to be "on the whole . . . rather disingenuous" and not credible.

A district court's findings of fact may be overruled only if clearly erroneous. *Short*, 933 N.W.2d at 537. The district court heard testimony from the real estate agents (both of whom opined that the sale was reasonable), heard the counter-arguments from appellants, and found that the real estate agents were credible and that the sale was, therefore, "commercially reasonable." In summary, because the evidence supports the district court's findings and appellants presented no evidence that the lack of appraisal and MLS listing controverts these findings, the district court did not clearly err.

Appellants' Objection to the Sale

Appellants separately argue that respondent "did not adequately consider the wishes of the majority of the heirs to buyout" the property. They argue that "the law recognizes that beneficiaries of an estate have 'heirs' preference to keep the property in the family,'" and that "the district court failed to properly . . . allow [appellants] reasonable time to pursue their goal of keeping the homestead in the family." Appellants are mistaken as to the law. Even if appellants had timely made an offer to purchase the property, which the record indicates did not occur, respondent was under no obligation to sell to the property to them.³ We review questions of law *de novo*. *Id.*

³ The hypothetical situation in which respondent may have been obligated to sell the property to appellants would have been if appellants had (1) timely filed an offer to purchase the property that was (2) reasonable and at a compelling price relative to both the market value of the property and any other competing offers. However, this obligation would have stemmed not from appellants' status as heirs but from respondent's duty to

Appellants argue the district court’s error in denying their objection to the sale confirmation is supported by our holding in *In re Estate of Riggle*, 654 N.W.2d 710, 714 (Minn. App. 2002). We disagree. In *Riggle*, this court concluded that a decedent’s spouse was entitled to ownership of the marital homestead despite allegations that the homestead had been “abandoned” by the spouse because the couple (while still married) was separated. *Id.* at 712-14. The holding of *Riggle* involved unique facts in which this court—in a very limited manner—recognized the public policy of retaining property within the “family unit” specifically in the context of a surviving spouse’s interest in a potentially-abandoned homestead. *Id.* at 715-16. However, neither *Riggle*, nor any other Minnesota caselaw create a preferential right for heirs to purchase property from an estate absent specific language in the will or an order of the district court. *See* Minn. Stat. § 524.3-715(23) (stating personal representative may unilaterally sell estate real property “[e]xcept as restricted or otherwise provided by the will or by an order in a formal proceeding”).

Appellants separately argue that Minn. Stat. § 524.3-607 (2020) “gives preference to heirs who wish to purchase estate property” by stating that “[o]n petition of any person who appears to have an interest in the estate . . . the [district] court may restrain a personal representative” from “jeopardiz[ing] unreasonably the interest of the applicant” in an estate. However, no such petition was filed and this issue was not considered by the district court. We decline to do so for the first time on appeal. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (“A reviewing court must generally consider ‘only those issues that the

dispose of the estate property in a manner “consistent with the best interests of the estate.” Minn. Stat. § 524.3-703(a). No such offer was made.

record shows were presented and considered by the trial court in deciding the matter before it.”).

Respondent was permitted and required by the clear and unambiguous language of Minn. Stat. § 524.3-715(23) and Minn. Stat. § 524.3-703(a) to sell the property. Moreover, respondent was permitted to do so without appellants’ consent. The district court did not err in approving the sale.

Affirmed.