STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0957

In re the Estate of:
Wade Scott Carlson, Deceased.

Filed February 6, 2023
Affirmed
Johnson, Judge

Hennepin County District Court
File No. 27-PA-PR-20-1060

Matthew P. Kostolnik, Sara E. Filo, Moss & Barnett, P.A., Minneapolis, Minnesota (for appellant Brian T. Carlson)

Kim Ruckdaschel-Haley, Best & Flanagan L.L.P., Minneapolis, Minnesota (for respondent Nancy E. Flatgard)

Considered and decided by Johnson, Presiding Judge; Segal, Chief Judge; and Jesson, Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

Twelve years after his brother's death, appellant petitioned the district court for the appointment of a special administrator to investigate and pursue claims against his sister for actions she may have taken years earlier while she was acting as attorney-in-fact for the now-deceased brother. The district court denied the petition on the grounds that any causes of action that a special administrator might possess are time-barred, that the deceased brother's will devised all of his property to the sister who acted as attorney-in-fact, and that

the petition is barred by the doctrine of laches. We conclude that the district court did not err by determining that the appointment of a special administrator is unnecessary. We also conclude that the district court did not err by denying the appellant's requests for an accounting and an injunction. Therefore, we affirm.

FACTS

Wade Scott Carlson (who was known as Scott) died in August 2008 at the age of 66. He had no surviving parents, spouse, or children. He had two surviving siblings: Brian T. Carlson, the appellant, and Nancy E. Flatgard, the respondent. For the sake of simplicity, we will refer to the three siblings by their given names in this opinion.

From approximately 1970 until 2001, Scott actively managed a business that he owned. In 2001, he owned three parcels of real property: a residential duplex on Fourteenth Avenue South in Minneapolis, a commercial property on Hiawatha Avenue South in Minneapolis (where his business was located), and a cabin in Vermont.

Scott lived in the upper level of the duplex, and his sister Nancy lived in the lower level. The district court found that Scott and Nancy had a warm relationship. In contrast, the district court found that Scott and Brian did not have a good relationship. To be specific, the district court credited non-party testimony that Scott "detested" Brian.

In 1984, Scott executed a will that devised all of his property to Nancy, if she survived him, and to his four nieces (Nancy's two daughters and Brian's two daughters) if Nancy did not survive him. In addition, Scott's will appointed Nancy executrix of the estate. The 1984 will does not mention Brian. The evidence suggests that Scott's relatives were unaware of the 1984 will until this case was pending in the district court.

In March 2001, Scott suffered a stroke. From that time forward, he was unable to manage his business. He also was unable to live independently in the duplex, and he moved to a nursing home.

In April 2001 and May 2001, Scott signed two documents that purported to grant a power of attorney to Nancy. The district court found that Scott did not have capacity to sign the documents. Nonetheless, Nancy thereafter acted as Scott's attorney-in-fact, paying his bills and otherwise managing his affairs, without objection by Brian or any other relative. In June 2001, Nancy transferred ownership of the duplex and the commercial property to herself, and she began occupying both the upper and lower levels of the duplex. In March 2004, Nancy sold the Vermont cabin and used the proceeds of $230,000 to pay Scott's expenses, which consisted primarily of the costs of his nursing care.

Scott died in August 2008. Neither Nancy nor any other person ever commenced a probate action to administer his estate.

In June or July of 2020, Nancy's health declined, and she moved to a nursing home. In the following weeks, Brian had several conversations with Nancy about her estate plan. In a pre-trial order, the district court found that Brian, a licensed attorney, was acting as Nancy's attorney in his conversations with her and in his correspondence with a law firm from which Brian requested a copy of Nancy's estate-planning file. The district court later found that, at trial, Nancy displayed symptoms of dementia and memory loss and that her testimony was sincere but not reliably accurate.

In August 2020—twelve years after Scott's death—Brian, while representing himself, commenced this action by petitioning the district court for the appointment of

himself as special administrator of Scott's estate for the purpose of investigating Nancy's actions as attorney-in-fact between 2001 and 2008 and pursuing claims against her on behalf of the estate. Brian also requested an accounting as well as an injunction preventing Nancy from using or dissipating assets that Scott owned during his lifetime. Nancy opposed the petition on the grounds that Scott's estate may not be probated more than three years after his death, that the statute of limitations for all causes of action against her have expired, and that the petition is barred by the doctrine of laches.

Both Brian and Nancy alleged in 2020 that Scott died intestate. But in June 2021, one of Nancy's daughters found Scott's 1984 will while she was cleaning the duplex. The 1984 will was filed with the district court administrator.

Before trial, the district court granted Nancy's motion to disqualify Brian from representing himself at trial on the ground that he has a conflict of interest arising from his prior representation of Nancy in the months before he commenced the action. Brian then retained an attorney, who represented him in further proceedings.

The case was tried to the district court on two days in October 2021. The district court heard testimony from seven witnesses and received 25 exhibits into evidence. In January 2022, the district court filed a 28-page order in which it denied all relief sought by Brian. The district court concluded that it is unnecessary to appoint a special administrator because Scott's 1984 will devised all of his property to Nancy and because any causes of action that a special administrator might assert against Nancy are now time-barred. In the alternative, the district court concluded that Brian's petition is barred by the doctrine of laches. In addition, the district court denied Brian's requests for an accounting and an

injunction on the ground that the requests are moot. Brian moved for a new trial or, in the alternative, amended findings. The district court denied most of the relief requested in Brian's post-trial motion, granted the motion in part by amending some findings of fact, and ultimately denied Brian's petition for essentially the same reasons as were stated in the prior order. Brian appeals.

DECISION

I. Request for Special Administrator

Brian first argues that the district court erred by denying his request for the appointment of a special administrator.

The applicable statute provides that a district court may appoint a special administrator "on the petition of any interested person and finding . . . that appointment is *necessary to preserve the estate or to secure its proper administration* including its administration in circumstances where a general personal representative cannot or should not act." Minn. Stat. § 524.3-614(2) (2022) (emphasis added).

A. Relevance of 1984 Will

Brian's argument has two parts. We first consider his argument that the district court erred in the manner that it considered the 1984 will.

In its amended order, the district court relied on the following statute as the legal basis for admitting the 1984 will into evidence:

> Except as provided in section 524.3-1201, to be effective to prove the transfer of any property, to nominate an executor or to exercise a power of appointment, a will must be declared to be valid by an order of informal probate by the registrar, or an adjudication of probate by the court in a formal

> proceeding or proceedings to determine descent, *except that a duly executed and unrevoked will which has not been probated may be admitted as evidence of a devise if (1) no court proceeding concerning the succession or administration of the estate has occurred, and (2) either the devisee or the devisee's successors and assigns possessed the property devised in accordance with the provisions of the will*, or the property devised was not possessed or claimed by anyone by virtue of the decedent's title during the time period for testacy proceedings.

Minn. Stat. § 524.3-102 (2022) (emphasis added). The district court reasoned that the 1984 will is valid, has not been revoked, and is relevant to prove that Scott made a devise to Nancy.

Brian contends that the district court erred by effectively admitting the 1984 will into probate and administering it, after the three-year period for commencing a probate action had lapsed. In response, Nancy contends that the district court expressly stated that it was not probating the 1984 will and that the district court properly considered the 1984 will because she relied on it in opposing Brian's petition. Specifically, she sought to prove that Scott did *not* die intestate and that she presently is properly in possession of assets that Scott owned during his lifetime. Nancy contends further that the 1984 will is admissible pursuant to the plain language of section 524.3-102. We apply a *de novo* standard of review to the district court's interpretation and application of the probate code. *Laymon v. Minnesota Premier Props., LLC*, 913 N.W.2d 449, 452 (Minn. 2018).

The first part of section 524.3-102 states a general rule that a will may not be used to prove the transfer of property unless it has been declared valid and adjudicated in a probate proceeding. *See* Minn. Stat. § 524.3-102. But the general rule is followed by an

exception, which is highlighted above with italics. *See id.* The exception allows a will to be "admitted as evidence of a devise" if two prerequisites are satisfied: first, that there has been no administration of the estate and, second, that "the devisee . . . possessed the property devised in accordance with the provisions of the will." *Id.* The district court determined that the exception's prerequisites are satisfied. On appeal, Brian does not argue with specificity that either prerequisite is not satisfied. He contends only that the district court invoked the exception "to sidestep the expired time bar for probating decedent's 1984 will and award all assets to respondent, thereby treating it as a valid will in violation of applicable probate rules." To the contrary, the district court relied on the exception in the statute for its very purpose: to allow "a duly executed and unrevoked will which has not been probated" to be "admitted as evidence of a devise." *See id.*

Brian cites only one opinion in support of his argument: *Estate of Peterson*, 579 N.W.2d 488 (Minn. App. 1998), *rev. denied* (Minn. Aug. 18, 1998). Brian quotes the syllabus of the opinion, which states, "If a writing has not been admitted to probate as a decedent's will, the probate court has no authority to treat the writing as if it were a valid will." *Id.* at 489. The *Peterson* opinion does not support Brian's argument. The appellant in that case filed a claim against the decedent's estate, in a probate action to administer the estate, based on two purported contracts, which the district court found to be unenforceable. *Id.* at 489-92. This court affirmed that ruling. *Id.* at 492. On appeal, the appellant made an alternative argument that the purported contracts should be treated as valid wills. *Id*. But in the district court, the documents had not been offered as valid wills and were not admitted to probate as valid wills. *Id.* at 489-92. Furthermore, the district court had made

a formal adjudication of intestacy. *Id.* at 492. The *Peterson* opinion does not cite section 524.3-102, but its conclusion with respect to the appellant's alternative argument is consistent with the statute's general rule that a purported will cannot "prove the transfer of any property" if it has not been declared valid in a probate proceeding. *See* Minn. Stat. § 524.3-102. The circumstances of that case are inconsistent with the statute's exception, which does not apply if a probate proceeding has occurred. *See id.* Accordingly, *Peterson* does not establish that Scott's 1984 will should not have been admitted into evidence pursuant to the exception in section 524.3-102.

Thus, the district court did not err by admitting the 1984 will into evidence as evidence of a devise pursuant to the exception in section 524.3-102.

B. Necessity of Special Administrator

We next consider Brian's argument that the district court erred by concluding that the appointment of a special administrator is not necessary.

As stated above, a district court may appoint a special administrator if "that appointment is necessary to preserve the estate or to secure its proper administration." Minn. Stat. § 524.3-614(2). Because the statute uses the word "may," the appointment of a special administrator is a discretionary decision for the district court. *See, e.g.*, *In re Welfare of Children of J.D.T.*, 946 N.W.2d 321, 327-28 (Minn. 2020). Accordingly, we apply an abuse-of-discretion standard of review. *In re Estate of Martignacco*, 689 N.W.2d 262, 269 (Minn. App. 2004) (reviewing district court's appointment of personal representative), *rev. denied* (Minn. Jan. 26, 2005).

The district court determined that it was not necessary to appoint a special administrator for two reasons. First, the district court reasoned that Nancy's 2001 transfers of Scott's Minnesota real property to herself were consistent with the 1984 will, which devised all of Scott's property to her. Second, the district court reasoned that any causes of action that a special administrator might assert against Nancy based on transfers that were made as long as 19 years ago are now time-barred. The district court added that appointing a special administrator would be time-consuming and expensive and would not result in any benefit to any party.

On appeal, Brian does not challenge the first part of the district court's reasoning, that Nancy's 2001 transfers of Scott's property to herself are consistent with the 1984 will. He challenges the second part of the district court's reasoning by contending that the district court "should not have engaged in a premature analysis" of statute-of-limitations issues but, rather, should allow a special administrator to commence claims against Nancy and should resolve the statute-of-limitations issues if and when Nancy moves to dismiss on that ground. Brian does not attempt to make any showing that the potential claims against Nancy are *not* time-barred. He also does not attempt to dispute the district court's reasoning that appointing a special administrator would be time-consuming and expensive without any benefit.

Brian's argument fails to appreciate the statutory standard. A district court may appoint a special administrator only if "that appointment is *necessary to preserve the estate or to secure its proper administration*." Minn. Stat. § 524.3-614(2) (emphasis added). The circumstances provide ample justification for the district court's discretionary decision to

not appoint a special administrator. The district court appropriately reasoned that it would be expensive to discover evidence relevant to transactions occurring as long ago as 2001, especially in light of the district court's finding that Nancy now exhibits symptoms of memory loss and dementia. The district court also reasoned appropriately that, even if claims against Nancy are assumed to be valid, the result would be the same as the status quo: she would be entitled to the property Scott owned during his lifetime. In short, the appointment of a special administrator would not serve either of the purposes identified in the statute.

Thus, the district court did not err by denying Brian's petition for the appointment of a special administrator.

We note that Brian also challenges the district court's alternative conclusion that Brian's request for a special administrator is barred by the doctrine of laches. Because we affirm the district court's denial of the request on the merits, we need not consider the issue of laches.

II. Requests for Accounting and Injunction

Brian also argues that the district court erred by not ordering an accounting and by not enjoining Nancy from using or dissipating assets that Scott owned during his lifetime.

The district court resolved Brian's requests for an accounting and an injunction in a single paragraph by stating as follows: "Because the only valid will left everything to Ms. Flatgard and there are no timely causes of action to rectify the financial abuse, the requests for an injunction and accounting are denied as moot. Moreover, the statute of limitations for an accounting has long since expired."

Brian does not cite any legal authority for his request for an injunction. His request for an accounting is based on a statute providing that "any interested person . . . may petition the court for a protective order directing an attorney-in-fact to provide an accounting." Minn. Stat. § 523.26(a) (2022). The statute does not provide any criteria to guide a district court in ruling on a request for an accounting, and we are unaware of any such criteria in caselaw.

For the same reasons that the district court did not err in denying Brian's request for a special administrator, the district court did not err in also denying Brian's requests for an accounting and an injunction. As stated above, further proceedings would serve no valid purpose because a special administrator could not assert timely claims and because any recovery would inevitably flow back to Nancy. The district court's denial of Brian's request for a special administrator effectively concluded the proceeding, so there was no reason to order an accounting or an injunction.

III. Motion for New Trial

Brian last argues that the district court erred by denying his motion for a new trial. He seeks a new trial on the ground that the district court erred in denying his requests for appointment of a special administrator, an accounting, and an injunction. For the reasons stated above in parts I and II, we have concluded that the district court did not err in those rulings. Thus, the district court did not err by denying Brian's motion for a new trial.

Affirmed.