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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0996**

In re: Estate of Maryetta Louise Andrews.

**Filed March 27, 2023
Affirmed in part and reversed in part
Larkin, Judge**

Crow Wing County District Court
File No. 18-PR-19-21

David R. Crosby, Kacie J. Phillips, Stinson LLP, Minneapolis, Minnesota (for appellant Rory Andrews)

Nicolet Y. Lyon, Law Office of Katherine L. Mackinnon P.L.L.C., St. Paul, Minnesota;
and

Patricia J. Stotzheim, Stotzheim Law Office & Mediation, LLC, St. Paul, Minnesota (for respondent Marc Battistini)

Considered and decided by Connolly, Presiding Judge; Larkin, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

In this probate dispute, appellant assigns error to the district court's determination that his grandmother's decision to remove him as a beneficiary of a trust did not result from undue influence, as well as its denial of his request for equitable relief and attorney fees. By notice of related appeal, the deceased's son-in-law, respondent, asserts that the district court erroneously found that he breached a fiduciary duty to the decedent. We

affirm the district court's determinations regarding undue influence, equitable relief, and attorney fees. But we reverse the district court's determination that respondent breached a fiduciary duty.

FACTS

Appellant Rory Andrews challenged his grandmother's modification of her estate plan, which resulted in his removal as a beneficiary of a trust, alleging that the modification was the product of undue influence. He also alleged that respondent Marc Battistini breached his fiduciary duties. This appeal stems from the district court's judgment following a three-day probate trial on appellant's claims. The evidence presented at trial is summarized below.

Maryetta Louise Andrews had two children, Scott and Sandra. Scott and his wife had one child, appellant. Sandra and her husband, respondent herein, had two children. Scott and Sandra predeceased Maryetta in 2014 and 2017 respectively. Maryetta died in 2018.

When appellant was around six years old, he and his parents moved to Hawaii, where appellant continues to reside. From 2010 to 2016, appellant visited Maryetta for one or two weeks every summer, except for one missed visit. Appellant last visited Maryetta in August 2016. Appellant claims that during that visit, Maryetta "never expressed any concerns or disappointment with him." Appellant testified that he could recall texting Maryetta only three times in the last three years of her life and that he last communicated with her in a letter he sent her at Christmas of 2016.

Respondent and his family lived about two hours away from Maryetta and were involved with the maintenance and care of some of her properties throughout her life. In the later years of Maryetta's life, respondent and his family drove her to appointments, maintained her home, assisted with bill payments, scheduled appointments, and eventually helped her move into assisted living. In June 2016, Maryetta designated respondent, Sandra, and one of their daughters as her attorneys-in-fact.

Maryetta had extensive hearing loss and preferred to communicate via text or email, but she was able to orally communicate and to read lips. Appellant claimed that Maryetta began experiencing significant cognitive decline around the summer of 2016. Respondent reported that Maryetta began to "lose weight and decline" in the spring of 2017 and moved into a memory care facility in June 2017. The district court did not make findings regarding Maryetta's cognitive abilities and simply stated that Maryetta moved into the memory care unit "due to her declining health."

Maryetta was the settlor of the Maryetta Louise Andrews Trust, created with assistance from her attorney in 2004. The trust directed that the trust assets be divided equally between Scott and his descendants and Sandra and her descendants. Maryetta named Scott as the trustee and respondent as the successor trustee.

During the summer and fall of 2016, Maryetta met with her attorney approximately six times to develop her estate plan. Respondent and his family transported Maryetta to those meetings. In a September 2016 letter, Maryetta's attorney stated that her "plan" was to remove appellant as a trust beneficiary and instead deposit \$30,000 into a payable-upon-death bank account and to make appellant the beneficiary. In October 2016, Maryetta

executed the Will of Maryetta Louise Andrews and the Restatement of the Maryetta Louise Andrews Trust Agreement at her attorney's office. The testamentary documents omitted appellant as a beneficiary.

Maryetta's attorney testified that Maryetta understood everything she read and agreed to when she developed her most recent estate plan. The attorney also testified that he did not sense any excessive desire to be involved in the estate-planning process or any "overbearing" behavior from respondent or his family that would have suggested inappropriate involvement in her estate planning.

After the bench trial, the district court determined that respondent and his family did not "taint the [t]rust with impropriety," that Maryetta's most recent estate plan was not the product of undue influence, and that appellant was not entitled to attorney fees and costs. The district court also determined that respondent owed Maryetta a fiduciary duty as her attorney-in-fact and that respondent breached that duty by failing to "administer an account for Maryetta's payable-on-death gift" of \$30,000 to appellant. The district court ordered that respondent "shall be responsible for reimbursing [appellant] in the amount of \$30,000.00 for his breach of fiduciary duty."

Both parties appeal.

DECISION

I.

Appellant contends that the district court "either failed to adequately address or simply reached erroneous findings" when determining the existence of undue influence. Specifically, appellant argues that the district court failed to fully consider Maryetta's

cognitive decline, respondent's role in the estate planning process, and the "sloppy" work of Maryetta's estate attorney.

A party who contests a will as the product of undue influence has the burden to prove his claim by clear and convincing evidence. Minn. Stat. § 524.3-.407 (2022); *In re Est. of Reay*, 81 N.W.2d 277, 280 (Minn. 1957). "Clear and convincing" evidence means that "the truth of the facts asserted is highly probable." *In re Est. of Rechtzigel*, 385 N.W.2d 827, 832-34 (Minn. App. 1986) (quotation omitted). Undue influence is influence "of such a degree exerted upon the testator by another that it destroys or overcomes the testator's free agency and substitutes the will of the person exercising the influence for that of the testator." *In re Wilson's Est.*, 27 N.W.2d 429, 432 (Minn. 1947). A will contestant must show that another person exercised influence over the testator when the will was executed "to the degree that the will reflects the other person's intent instead of the testator's intent." *In re Est. of Torgersen*, 711 N.W.2d 545, 550 (Minn. App. 2006), *rev. denied* (Minn. June 20, 2006).

The following factors are considered when determining whether a will was the product of undue influence: (1) the influencing party's opportunity to exert influence over the testator, (2) the influencing party's active participation in the will preparation, (3) a confidential relationship between the influencing party and the testator, (4) disinheritance of parties who "probably would have [been] remembered," (5) singularity of the provisions of the will, and (6) the exercise of influence or persuasion to induce the testator to make the will. *Wilson's Est.*, 27 N.W.2d at 432. A district court determines the existence of undue influence by considering "all the surrounding circumstances." *Id.*

The existence of undue influence is a question of fact. *In re Est. of Opsahl*, 448 N.W.2d 96, 100 (Minn. App. 1989). On appeal from a probate court’s decision after a trial without a jury, findings of fact will be disturbed only if clearly erroneous. *Torgersen*, 711 N.W.2d at 550; *see* Minn. R. Civ. P. 52.01 (addressing clear error in civil proceedings); *see also* Minn. Stat. § 524.1-.304(a) (2022) (noting that the civil rules apply to probate proceedings as far as practicable, unless displaced by a probate statute); *In re Est. of Boysen*, 309 N.W.2d 45, 47 (Minn. 1981) (applying rule 52.01 in a probate appeal). The clear-error standard of review “is a review of the record to confirm that evidence exists to support the decision.” *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 222 (Minn. 2021). “When the record reasonably supports the findings at issue on appeal, it is immaterial that the record might also provide a reasonable basis for inferences and findings to the contrary.” *Id.* at 223 (quotation omitted). When applying the clear-error standard of review, appellate courts view the evidence in the light most favorable to the findings; they do not reweigh the evidence, make factual findings, or reconcile conflicting evidence. *Id.* at 221-22.

If evidence regarding undue influence is conflicting, the district court’s findings are “final on appeal, even though the appellate court, if it had the power to try the questions de novo, might determine otherwise upon reading of the record.” *In re Olson’s Est.*, 35 N.W.2d 439, 444 (Minn. 1948). This court gives due regard to the district court’s opportunity to judge the credibility of the witnesses and will not disturb the district court’s credibility determinations. Minn. R. Civ. P. 52.01; *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). This court does not second-guess the district court’s weighing of

evidence. *In re Salkin*, 430 N.W.2d 13, 16 (Minn. App. 1988), *rev. denied* (Minn. Nov. 23, 1988).

Appellant argues that the district court ignored certain evidence. The record refutes his argument and shows that the district court considered the relevant factors. The district court acknowledged that respondent and his family drove Maryetta to her appointments with her lawyer and that Maryetta relied on them, thereby providing an opportunity to influence her estate plan. But the district court found that Maryetta met with her attorney alone, without respondent or his family. The district court determined that respondent's role in scheduling appointments for Maryetta and providing transportation "[did] not taint the [t]rust with impropriety." Although the district court did not explicitly state that respondent had a confidential relationship with Maryetta based on his role as her attorney-in-fact, it cited caselaw holding that a mere confidential relationship is not enough to establish a showing of undue influence. *See Est. of Reay*, 81 N.W.2d at 280.

The district court also addressed the disinheritance of parties "who probably would have been remembered," by comparing the level of support that respondent and his family provided to Maryetta with the limited contact between appellant and Maryetta. The district court relied on testimony from Maryetta's attorney that she "was determined" to remove appellant from her estate plan despite the attorney's proposals that would have maintained appellant as a beneficiary.

Appellant also argues that the district court did not properly consider Maryetta's cognitive health. The district court heard testimony related to this issue from multiple witnesses, including Maryetta's attorney who testified that she understood and was

determined in her decision to remove appellant from her 2016 estate plan. The record shows that the district court relied more on the testimony of Maryetta's attorney, who worked closely with her to update her estate, as well as the testimony of respondent and his family, who were regularly with Maryetta, than it did on the testimony of appellant, who had not communicated with Maryetta in the year preceding her death.

Ultimately, the district court found that Maryetta had a "strong-willed attitude" and credited the testimony of respondent and Maryetta's attorney. This court gives due regard to the district court's opportunity to judge the credibility of witnesses. Minn. R. Civ. P. 52.01. Having reviewed the trial record in this case, we cannot say that the district court clearly erred in determining that appellant did not prove, by clear and convincing evidence, that Maryetta's estate-planning decisions were influenced by a force "so dominant and controlling" of her mind that she "ceased to act of [her] own free volition and became a mere puppet of the wielder of [the] influence." *In re Est. of Novotny*, 385 N.W.2d 841, 843 (Minn. App. 1986) (quotation omitted).

In sum, the district court did not clearly err in determining that Maryetta's estate plan was not the product of undue influence.

II.

Appellant contends that the district court abused its discretion by denying his request for equitable relief, including reasonable attorney fees, even though it determined that respondent breached his fiduciary duty.

"The general American rule is that attorney[] fees may not be awarded to a successful litigant without explicit statutory or contractual authorization." *Fownes v.*

Hubbard Broad., Inc., 246 N.W.2d 700, 702 (Minn. 1976). This court reviews a district court’s decision regarding attorney fees for an abuse of discretion. *In re Est. of Holmberg*, 823 N.W.2d 875, 876 (Minn. App. 2012), *rev. denied* (Minn. Nov. 27, 2012).

Appellant cites Minn. Stat. § 501C.1004 (2022), which provides that “[i]n a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney fees, to any party from the trust that is the subject of the judicial proceeding.” “[S]ection 501C.1004 governs a beneficiary or third party’s ability to recover attorney fees from trust assets.” *Lund ex rel. Revocable Tr. of Lund v. Lund*, 924 N.W.2d 274, 286 (Minn. App. 2019), *rev. denied* (Minn. Mar. 27, 2019).

Appellant emphasizes that he prevailed on his breach-of-fiduciary-duty claim and argues that “if the district court’s decision were permitted to stand, it would have a chilling effect on beneficiaries’ efforts to rectify wrongful actions taken by their fiduciaries.” However, as explained in section III of this opinion, the district court erred in concluding that respondent breached his fiduciary duty as Maryetta’s attorney-in-fact. Thus, appellant’s reliance on the alleged breach as a basis to assign error to the district court’s discretionary decision regarding attorney fees is unavailing.

We note that attorney fees may be available in a probate proceeding under Minn. Stat. § 524.3-.720 (2022) if an interested person successfully opposes a will or if an interested person’s claim results in a benefit to the estate. *See Holmberg*, 823 N.W.2d at 877 (stating that “appellant failed in her efforts to set aside the will and she cannot obtain attorney fees”); *Gellert v. Eginton*, 770 N.W.2d 190, 197 (Minn. App. 2009) (“Respondents

are entitled to recover their just and reasonable attorney fees commensurate with the benefit to the estate from the recovery so made.” (quotations omitted)), *rev. denied* (Minn. Oct. 20, 2009). In addition, Minn. Stat. § 523.21 (2022) provides for personal liability of an attorney-in-fact to any party “who is injured by an action taken by the attorney-in-fact in bad faith under the power of attorney.” Because appellant was not successful in his claims, because appellant’s claims did not benefit the estate, and because the district court did not find that respondent acted in bad faith, appellant is not entitled to attorney fees under these statutes.

In sum, the district court did not abuse its discretion in denying appellant’s request for attorney fees.

III.

In his related appeal, respondent contends that the district court erred in determining that he had a fiduciary duty to set up a bank account with \$30,000 for appellant’s benefit. Specifically, he argues that he had no duty to open a bank account when Maryetta did not specifically instruct him to do so and that he is not liable to appellant as a third party because there was no finding of bad faith.¹

A party asserting a breach-of-fiduciary-duty claim must prove four elements: duty, breach, causation, and damages. *Hansen v. U.S. Bank Nat’l Ass’n*, 934 N.W.2d 319, 327

¹ Respondent also argues that he did not breach his fiduciary duty as a personal representative or as a trustee. The district court’s finding of a breach is based on respondent’s role as Maryetta’s attorney-in-fact. We limit our review to the district court’s decision. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that an appellate court generally does not review issues that were not considered and decided by the district court).

(Minn. 2019). The existence of a duty here is undisputed—as an attorney-in-fact under decedent’s power of attorney, respondent owed Maryetta a fiduciary duty. *State v. Campbell*, 756 N.W.2d 263, 271 (Minn. App. 2008), *rev. denied* (Minn. Dec. 23, 2008). The issue here is breach. “Whether a fiduciary duty has been breached generally is a question of fact.” *Berreman v. W. Publ’g Co.*, 615 N.W.2d 362, 367 (Minn. App. 2000), *rev. denied* (Minn. Sept. 26, 2000). “Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous” Minn. R. Civ. P. 52.01. An appellate court “will not conclude that a factfinder clearly erred unless, on the entire evidence, [it is] left with a definite and firm conviction that a mistake has been committed.” *Kenney*, 963 N.W.2d at 221 (quotation omitted).

The district court found that respondent breached his fiduciary duty because he knew that Maryetta intended to set up an account for appellant, he understood that he had a duty to assist her with this transaction, and he did not take any action to set up the account. A letter written by Maryetta’s attorney on September 29, 2016, confirmed her intent to remove appellant as a beneficiary of the trust and to instead give him a gift:

At your direction, your grandson [appellant] does not receive anything from you through your [t]rust, as restated. Only Sandra or her children do. Your plan, which I encourage you to act upon immediately upon signing the enclosure, is to make a gift to [appellant] through a bank account(s) in which he is named as the payable on death (“POD”) beneficiary. In our last conference, you stated that your plan was to make that gift be a total of \$30,000.00, initially.

Maryetta’s lawyer testified that Maryetta understood that appellant had been omitted from her estate plan and that if she wanted to leave something for him, she would

have to act to make that happen. Respondent testified in his deposition that he “was going to make sure that [appellant] got the \$30,000.” During respondent’s testimony at trial, he was asked, “[d]id you feel you had an obligation to set up an account” for appellant. Respondent replied, “[a]t the time I did,” yet he did not establish the bank account. Respondent argues that he felt a personal obligation to set up the account, and that it was not a legal obligation. Respondent’s trial testimony about his feelings on the subject is not dispositive regarding whether he in fact breached his fiduciary duty.

In determining that respondent breached his fiduciary duty, the district court did not find that Maryetta directed respondent to open an account for appellant’s benefit. Instead, the district court seemed to reason that because respondent knew of Maryetta’s intent to give appellant a gift, and because he had the authority to manage her finances and was a joint owner of her checking account, he was required to take it upon himself to open an account and deposit \$30,000 for the benefit of appellant, with or without instructions to do so. The district court relied on Minn. Stat. § 523.21 and explained that:

An attorney-in-fact has the duty to exercise the power in the same manner as an ordinarily prudent person of discretion and intelligence would exercise in the management of the person’s own affairs and shall have the interests of the principal utmost in mind.

However, section 523.21 states that:

The attorney-in-fact has no affirmative duty to exercise any power conferred upon the attorney-in-fact under the power of attorney. In exercising any power conferred by the power of attorney, the attorney-in-fact shall exercise the power in the same manner as an ordinarily prudent person of discretion and intelligence would exercise in the management of the person’s

own affairs and shall have the interests of the principal utmost in mind.

(Emphasis added.)

In applying the statute, the district court reasoned that respondent, as Maryetta's attorney-in-fact, had a duty to exercise the powers conferred on him even though Maryetta did not request him to act and even though the statute explicitly states that "[t]he attorney-in-fact has no affirmative duty to exercise any power conferred upon the attorney-in-fact under the power of attorney." Minn. Stat. § 523.21. Although respondent had the power to open an account on behalf of Maryetta for the benefit of appellant, he had no duty to exercise that power without a directive from Maryetta. Thus, on the circumstances presented in this record, we conclude that the district court clearly erred by finding that respondent had a duty as attorney-in-fact to assist Maryetta with this transaction in the absence of a request that he do so.

The district court also based its decision on a portion of Minn. Stat. § 523.21 that provides that an attorney-in-fact "is personally liable to any person, including the principal, who is injured by an action taken by the attorney-in-fact in *bad faith* under the power of attorney or by the attorney-in-fact's failure to account when the attorney-in-fact has a duty to account under this section." (Emphasis added.) But, as both parties note, the district court did not make a finding that respondent acted in bad faith.²

² Appellant argues that this court should remand for the district court to determine whether respondent acted in bad faith. But the case that he cites as support, *Northfield Care Ctr., Inc. v. Anderson*, involved a remand after summary judgment and not a remand after trial, as would be the case here. 707 N.W.2d 731, 737 (Minn. App. 2006). On a timely motion, "the court may amend its findings or make additional findings, and may amend the

In sum, the district court’s finding that respondent breached his fiduciary duty as Maryetta’s attorney-in-fact cannot be sustained. We therefore reverse the district court’s order that respondent “shall be responsible for reimbursing [appellant] in the amount of \$30,000.00 for his breach of fiduciary duty.”

Affirmed in part and reversed in part.

judgment accordingly if judgment has been entered.” Minn. R. Civ. P. 52.02. “The purpose of a motion for amended findings is to permit the [district] court a review of its own exercise of discretion.” *Johnson v. Johnson*, 563 N.W.2d 77, 78 (Minn. App. 1997) (quotation omitted), *rev. denied* (Minn. June 30, 1997). The parties do not cite, and we are not aware of, a statutory provision that would, under Minn. Stat. § 524.1-.304(a), preclude application of rule 52.02 in this context. Further, we do not discern a reason why appellant should be allowed a third opportunity to argue in support of a finding of bad faith.