This opinion is nonprecedential except as provided by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
A24-0907

In re the Estate of: Josephine Lucille Bicanich, Decedent.

Filed December 23, 2024
Affirmed
Connolly, Judge

Dakota County District Court
File No. 19HA-PR-16-518

Thomas Bicanich, Chisholm, Minnesota (pro se appellant)

Christopher J. Burns, Eric Friske, Henson & Efron, P.A., Minneapolis, Minnesota (for respondent Fiduciary Foundation, LLC)

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

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Pro se appellant Thomas Bicanich challenges the district court's order settling an estate, arguing that the district court erred by (1) determining a transfer-on-death deed was ineffective and (2) settling the estate. We affirm.

FACTS

This appeal concerns the estate of Josephine Bicanich, decedent, who died testate on July 25, 2016. She left no surviving spouse and four children: Peter Bicanich, Constance O'Hara (Connie), appellant Thomas Bicanich, and David Bicanich.[1] The estate has been subject to litigation by Josephine's children for eight years. Josephine's estate consisted of (1) property in Hibbing, Minnesota (Hibbing house), (2) property in Chisholm, Minnesota (Chisholm house), (3) two vehicles, (4) a bank account, and (5) personal property. The relevant probate asset on appeal is the Chisholm house.

The Chisholm and Hibbing houses were subject to several recordings while Josephine was alive. On May 7, 2015, Josephine executed a transfer-on-death deed (TODD) conveying the Chisholm and Hibbing houses upon her death to her children. It was signed by a notary public, but the notary stamp was not affixed to the notary's signature. The TODD was recorded on May 20, 2015.

In January 2016, Connie and Peter, acting as Josephine's attorneys-in-fact under power of attorney, executed quit-claim deeds for both homes to themselves. This quit-claim deed was notarized and recorded. Two days later, Josephine revoked the power of attorney that she granted to Connie and Peter. Josephine also hired an attorney to have both homes reconveyed back to her by quit-claim deed.

In February 2016, Connie was appointed as emergency guardian of Josephine in conservatorship proceedings. The same order required Connie and Peter to "record a deed placing the Hibbing [house] into [Josephine's] name." Connie, Peter, and Peter's spouse subsequently conveyed both the Chisholm and Hibbing houses by quit-claim deed to Josephine. The quit-claim deed was notarized and recorded.

---

[1] Because decedent and almost all the children have the same surname, we refer to them in this opinion by their first names.

After Josephine died, Connie petitioned the district court for probate of Josephine's will and for formal appointment of a personal representative in August 2016. For over a year, the children did not agree on who should be appointed the personal representative, so the district court appointed respondent Fiduciary Foundation L.L.P. to that position.

During the probate proceedings, Thomas was living in the Hibbing house as a tenant. Fiduciary Foundation secured a buyer for the Hibbing house and, due to an issue with the title, petitioned the district court to approve the sale. In 2019, the district court approved Fiduciary Foundation's sale of the Hibbing house and determined that the house was a probate asset of the estate. Thomas then filed an ex parte request that the district court allow him to live in the Chisholm house. The district court denied the request for ex parte relief as improper, and Thomas eventually vacated the Hibbing house.

In April 2020, Thomas filed a letter with the district court stating that the 2015 TODD "supersedes any probate action and precludes [the] Hibbing and Chisholm homes from being any part of . . . probate." The district court again denied Thomas's request for ex parte relief. Fiduciary Foundation then filed a notice of motion and motion for temporary restraining order or temporary injunction concerning the Chisholm house to prevent Thomas's "attempt to reside" in the Chisholm house, alleging that the Chisholm house is a probate asset, and that the TODD was ineffective. The district court granted Fiduciary Foundation's request and enjoined Thomas from residing at the Chisholm house.

The district court held an evidentiary hearing to determine the validity of the TODD. The district court issued an order in January 2021, finding that the 2015 TODD was ineffective under Minnesota law because (1) Connie and Peter subsequently conveyed the house by quit-claim deed, and (2) it failed to satisfy the requirements of Minnesota real estate deeds by not containing a notary seal or stamp. The district court determined the Chisholm house was part of the decedent's estate. Thomas subsequently attempted, unsuccessfully, to appeal the district court's order. *See In re Estate of Bicanich*, A21-0454 (Minn. App. May 11, 2021) (order) (concluding that the district court order was not immediately appealable under Minnesota law because it did not direct the conveyance of property).

Fiduciary Foundation continued its attempts to sell the Chisholm house and planned for an estate sale of the personal property within the home. Thomas then filed a petition to remove Fiduciary Foundation as the personal representative, alleging that it "breached its fiduciary duty to [Josephine's] estate" by (1) failing to respond to his allegations that Connie and Peter engaged in fraud, (2) initiating eviction actions against him, and (3) filing "false affidavits" with the court to obtain the restraining order and injunction preventing him from entering the Chisholm house. Thomas also continued to assert that the TODD should not have been deemed ineffective. The district court denied the petition to remove the personal representative. In addition, the district court concluded that the "doctrine of collateral estoppel applies to the issue of ownership of the Chisholm house and should not have been raised."

Thomas appealed the district court's decision and also attempted to appeal the January 2021 order. This court determined that the district court did not abuse its discretion in denying Thomas's petition to remove the personal representative. *In re Estate of Bicanich*, No. A22-0624, 2023 WL 1956501, at *2 (Minn. App. Feb. 13, 2023), *rev. denied*

(Minn. Apr. 26, 2023) (*Bicanich I*). At that time, we concluded that Thomas's allegations of fraud by Connie and Peter did not establish cause to remove the personal representative, because the fraud occurred prior to Fiduciary Foundation being appointed as personal representative, and the statements it made in its petition to enjoin Thomas from residing at the Chisholm house did not constitute "false affidavits." *Id.* at *2-3. And this court determined that review of the January 2021 order was outside the scope of appeal. *Id.* at *3.

After the last appeal, Fiduciary Foundation sold the Chisholm house in the summer of 2023. Fiduciary Foundation then petitioned the district court to settle the estate. Thomas filed a "notice of motion and motion for summary judgment to deny all fees and expenses for breach of fiduciary duty" on the basis that Fiduciary Foundation "falsely cited" Minnesota statutes when it sought to invalidate the 2015 TODD in 2021. Thomas also objected to the petition, in part, based on his claims that Fiduciary Foundation "fraudulently cited" Minnesota statutes when it sought to invalidate the TODD.

After holding three evidentiary hearings, the last of which concluded on January 19, 2024, the district court issued an order settling the estate on April 18, 2024. The district court also issued a separate order on April 18, 2024, that denied Thomas's motion for summary judgment and concluded that the attorney fees submitted by Fiduciary Foundation's attorney, the personal representative fees, and the funds expended to conduct the estate sale, were reasonable.

Thomas appeals.

DECISION

I. The district court did not err in determining that the TODD was ineffective.

Thomas appears to argue that the district court erred in determining that the 2015 TODD was ineffective, because the district court "relied on" Fiduciary Foundation's "false statements."[2] The district court determined that the TODD was ineffective for two reasons: (1) the Chisholm house was subsequently conveyed after the TODD was recorded; and (2) the TODD did not contain a notary stamp.

We review de novo a district court's determination of the validity of a deed that is based on the interpretation of a statute. *See Stone v. Jetmar Props., LLC*, 733 N.W.2d 480, 484 (Minn. App. 2007). A TODD is "only effective on the death of one or more of the

---

[2] Thomas's claims are arguably moot because Thomas did not make the appropriate requests to the district court to prevent the sale of the Chisholm house. "Justiciability is an issue of law that we review de novo." *Snell v. Walz*, 985 N.W.2d 277, 283 (Minn. 2023). "Mootness has been described as the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Laymon v. Minn. Premier Props., LLC*, 903 N.W.2d 6, 19 (Minn. App. 2017) (quotation omitted), *aff'd*, 913 N.W.2d 449 (Minn. 2018). But "[a]n appeal should be dismissed as moot when a decision on the merits is no longer necessary or . . . effective relief is no longer possible." *Id.* (quotation omitted). An appeal is not moot if an appellant can be afforded effective relief. *Hous. & Redevelopment Auth. ex rel. City of Richfield v. Walser Auto Sales, Inc.*, 641 N.W.2d 885, 891 (Minn. 2002).

Thomas repeatedly argued to the district court that the TODD was effective at the time of Josephine's death, but when he learned that Fiduciary Foundation would be selling the home, he did not request injunctive relief to prevent the sale. *See In re Est. of Figliuzzi*, 979 N.W.2d 225, 233 (Minn. 2022) (concluding that, if a district court order does not analyze a request for relief as one for injunctive relief and does not effectively grant or deny an injunction, the order is not appealable under Minn. R. Civ. App. P. 103.03). However, because the district court's ruling regarding the effectiveness of the TODD is within the scope of Thomas's appeal from the final order settling the estate, we review his claims on the merits. *See* Minn. R. Civ. App. P. 103.04 (the scope of review on appeal includes "any order affecting the order from which the appeal is taken" and "any other matter as the interest of justice may require").

grantor owners." Minn. Stat. § 507.071, subd. 2 (2022). A TODD is ineffective "[i]f a grantor owner conveys to a third party, subsequent to the recording of the [TODD], by means other than a [TODD], all or part of such grantor owner's interest." Minn. Stat. § 507.071, subd. 10(b) (2022).

Thomas's contention that Fiduciary Foundation made a "false statement" in relying on section 507.071 to argue that the 2015 TODD was ineffective fails. In the January 2021 order, the district court determined that the TODD "was not in effect under Minnesota Statute [§] 507.071 on the date of [Josephine's] death and a nullity under Minnesota case law." After the TODD was recorded and before Josephine's death, the Chisholm property was subject to two conveyances by Connie and Peter while acting as Josephine's attorneys-in-fact. Connie and Peter first conveyed the property to themselves by quit-claim deed and then conveyed it back to Josephine by quit-claim deed. Because a TODD is no longer effective if the property is subsequently conveyed after the TODD was recorded, Connie and Peter's quit-claim deeds rendered the 2015 TODD ineffective under section 507.071. Accordingly, Fiduciary Foundation's legal arguments did not constitute "false statements," and the district court did not err in determining that the TODD was ineffective under section 507.071.

To the extent that Thomas argues Fiduciary Foundation made "false statements" about the circumstances surrounding Connie and Peter's quit-claim deeds, we decline to reexamine this issue because it was already considered in Thomas's prior appeal. *See Minn. Power & Light Co. v. Minn. Pub. Utils. Comm'n.*, 342 N.W.2d 324, 327 (Minn. 1983) ("[I]ssues considered and adjudicated on a first appeal become the law of the case and will not be reexamined or readjudicated on a second appeal of the same case." (quotation omitted)); *see also* Minn. R. Civ. App. P. 140.01 (stating that there is no rehearing in the court of appeals). As noted above, this court determined that Thomas's allegations of fraud by Connie and Peter "did not establish cause to remove the personal representative because any fraud occurred prior to the appointment of the personal representative, it was addressed in the conservatorship proceeding, and the properties were included in the estate." *Bicanich I*, 2023 WL 1956501, at *2. And, as part of that appeal, Thomas argued that Fiduciary Foundation submitted "false affidavits" to the district court in support of the request for a temporary restraining order preventing Thomas from residing at the Chisholm house. *Id.* at *3. We determined that Fiduciary Foundation's statements did not constitute "false affidavits." *Id.*

Thomas's next contention, that Fiduciary Foundation made a "false statement" by arguing to the district court that the TODD was ineffective for not containing a notary stamp pursuant to Minnesota law, also fails. A TODD "must comply with all provisions of Minnesota law applicable to deeds of real property." Minn. Stat. § 507.071, subd. 2. A TODD is valid if it is recorded in the appropriate county. Minn. Stat. § 507.071, subd. 8 (2022). And to record an "instrument affecting real estate," it "must contain the original signatures of the parties who execute it and . . . the notary public or other officer taking an acknowledgment." Minn. Stat. § 507.24, subd. 2(a) (2022). Minnesota law requires that when "a notarial act regarding a tangible record is performed by a notary public, an official stamp must be affixed to the certificate." Minn. Stat. § 358.65, subd. 2 (2022). "A notary's certificate of acknowledgment without the seal is a nullity." *Hartkopf v. First State Bank of Correll*, 256 N.W. 169, 170 (Minn. 1934).

Thomas does not dispute that when the 2015 TODD was recorded it did not have the notary's seal attached. But he contends that the failure to attach the notary seal does not render the TODD ineffective because Minn. Stat. § 358.73 (2022) states that "the failure of a notarial officer to perform a duty or meet a requirement specified in sections 358.51 to 358.76 does not invalidate a notarial act performed by the notarial officer." The statute goes on to read: "[t]his section does not validate a purported notarial act performed by an individual who does not have the authority to perform notarial acts." Minn. Stat. § 358.73. We have not found any case law interpreting this statute. But case law requires a notary's certificate be affixed with a notary's stamp to be effective. *See Hartkopf*, 256 N.W. at 170. Because the 2015 TODD did not have the notary stamp affixed to it when it was recorded, it was not effective under Minnesota law. *See* Minn. Stat. §§ 507.24, subd. 2(a) (requiring a notary's signature to record a real estate record), 358.65, subd. 2 (requiring a notary's stamp be affixed to the notary's certificate). Accordingly, Fiduciary Foundation's statements did not constitute "false statements" and the district court did not err in its determination that the TODD was ineffective.[3]

[3] Because we conclude Fiduciary Foundation did not make "false statements," Thomas has not satisfied his burden to vacate a probate judgment for fraud, which requires a showing that a party "intentionally misleads or deceives the court as to material circumstances." *In re Conservatorship of Bromley*, 359 N.W.2d 723, 724 (Minn. App. 1984), *rev. denied* (Minn. Mar. 21, 1985).

II. The district court did not err in settling the estate.

Thomas next argues that "all of [Fiduciary Foundation's] fees and expenses charged to [Josephine's] estate should be denied and damages awarded." We construe his argument as a challenge to the final order settling the estate.

We review a district court's findings of fact concerning wills under a clearly erroneous standard and the district court's conclusions of law de novo. *In re Estate of Short*, 933 N.W.2d 533, 537 (Minn. App. 2019). "Findings of fact are clearly erroneous only if the reviewing court is left with the definite and firm conviction that a mistake has been made." *Id.* (quotation omitted).

The district court granted Fiduciary Foundation's petition to settle the estate, finding that "[t]he [e]state has been fully administered." Thomas did not provide a transcript of the evidentiary hearings that form the basis of the district court's findings. On this record, we cannot conclude that the district court erred because "on appeal error is never presumed." *Loth v. Loth*, 35 N.W.2d 542, 546 (Minn. 1949) (quotation omitted). "[Error] must be made to appear affirmatively before there can be reversal. . . . [T]he burden of showing error rests upon the one who relies upon it." *Id.* (quotation omitted). And upon reviewing Thomas's briefing, it is unclear how the district court's January 2021 determination that the TODD is ineffective caused the district court to err in settling the estate. "While an appellant acting *pro se* is usually accorded some leeway in attempting to comply with court rules, he is still not relieved of the burden of, at least, adequately communicating to the court what it is he wants accomplished and by whom." *Carpenter* *v. Woodvale, Inc.*, 400 N.W.2d 727, 729 (Minn. 1987). Therefore, we conclude the district court did not err in settling the estate.

Affirmed.