

*This opinion is nonprecedential except as provided by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
A24-1043**

In re the SUPERVISED Estate of David Victor Page, Deceased.

**Filed March 3, 2025
Affirmed
Larson, Judge**

Hennepin County District Court
File No. 27-PA-PR-23-1085

Katherine Disterhaft-Cummings, Eveleth, Minnesota (self-represented appellant)

Julie N. Nagorski, Mary Alice Fleming, DeWitt, LLP, Minneapolis, Minnesota (for respondents Andrea Briese and Rachel Disterhaft)

Lori L. Guzman, Guzman LaLonde, PA, Apple Valley, Minnesota (for respondent Navigator Fiduciary and Forensic Services, Inc.)

Considered and decided by Larson, Presiding Judge; Reyes, Judge; and Bratvold, Judge.

NONPRECEDENTIAL OPINION

LARSON, Judge

Appellant Katherine Disterhaft-Cummings challenges the district court's decisions to deny her petition for appointment as the personal representative of decedent David Victor Page's estate and to deny her petition to remove respondent Navigator Fiduciary and Forensic Services, Inc. (Navigator) as the personal representative for the estate. Because the district court did not abuse its discretion in either decision, we affirm.

FACTS

Page died intestate in April 2023 with no surviving spouse or children. At the time of his death, Page had three nieces who inherited his estate: Disterhaft-Cumings and her sisters, respondents Rachel Disterhaft and Andrea Briese (the sisters). From early in the probate proceedings, the district court observed an “irretrievable breakdown in the relationship between” Disterhaft-Cumings and the sisters, and the district court appointed Navigator as a special administrator, in its capacity as a third-party professional fiduciary.¹ *See* Minn. Stat. § 524.3-614 (2024).

In October 2023, Disterhaft-Cumings petitioned for appointment as the personal representative of Page’s estate, asserting priority under Minn. Stat. § 524.3-203 (2024). The sisters cross-petitioned for the district court to appoint Navigator as the personal representative.

The district court held a hearing on the petitions. Disterhaft-Cumings testified about her qualifications to be the personal representative. She stated that she had “employment history and experience in project management” and that, as the personal representative, she would “work with her sisters, [and] she is a communicator, researcher, and facilitator.” She also testified that she wanted “to do what her Uncle wanted and honor his wishes.” Disterhaft-Cumings did not present any evidence aside from her testimony.

¹ Disterhaft-Cumings moved to remove Navigator as the special administrator, but the district court denied the motion. Disterhaft-Cumings does not challenge that decision on appeal.

Next, Navigator’s president—who had already been involved in managing the estate—testified. The president testified that Disterhaft-Cummings (1) demonstrated “a lack of respect in scheduling events” she requested; (2) made “excessive requests for communications”; (3) failed to comply with requests to stop photographing Navigator’s employees; and (4) showed “a lack of respect for the shared assets of the Estate,” specifically by “interfering in the work to secure [Page’s] home after a recent break in.” As evidence to support the president’s testimony, Navigator submitted various email communications with Disterhaft-Cummings for admission into the record.

Finally, Disterhaft testified about ongoing tension between the sisters and Disterhaft-Cummings. Disterhaft testified that Disterhaft-Cummings engaged in “persistent and consistently repetitive and unnecessary communications,” and that the sisters “were unable to reach agreements [with Disterhaft-Cummings] on matters ranging from the simple task of disposal of broken glass from [Page’s] home to those which were more complex,” such as whether to cremate or bury Page’s remains. As supporting evidence, Disterhaft provided three months’ worth of text messages—totaling 123 pages—between the sisters and Disterhaft-Cummings.

After the hearing, the district court denied Disterhaft-Cummings’s petition and granted the sisters’ cross-petition, explicitly finding the president and Disterhaft credible and Disterhaft-Cummings not credible. The district court found that, although Disterhaft-Cummings and the sisters had the highest priority for appointment, the “evidence overwhelmingly show[ed] [Disterhaft-Cummings had] difficulty in working with anyone to preserve the estate, as she often [was] uncooperative and obtuse.” Based on these findings,

the district court determined that Disterhaft-Cumings was not suitable to act as the personal representative under Minn. Stat. § 524.3-203(f)(2) and, instead, appointed Navigator as the personal representative.

Two days later, Disterhaft-Cumings petitioned to remove Navigator as the personal representative for cause under Minn. Stat. § 524.3-611 (2024). The district court denied the petition on three bases. First, Disterhaft-Cumings petitioned for removal only two days after Navigator became the personal representative, and no facts had changed during that time. Second, Disterhaft-Cumings filed the petition before the district court issued the Letters of General Administration that would enable Navigator to undertake its duties as the personal representative. *See* Minn. Stat. § 524.3-103 (2024). Third, Navigator had not become incapable of discharging its duties as the personal representative, nor had it committed acts that merited removal, such as “intentionally misrepresent[ing] material facts,” disregarding a court order, mismanaging the estate, or failing “to perform any duty pertaining to the office.” *See* Minn. Stat. § 525.3-611(b).

Disterhaft-Cumings appeals both decisions.

DECISION

On appeal, Disterhaft-Cumings challenges the district court’s decisions to deny her petition for appointment as the personal representative and her petition to remove Navigator as the personal representative.² We review both decisions for an abuse of

² Disterhaft-Cumings also requests that “the courts . . . list . . . both the condo and the house [as] exempt from being sold as she has a 1/3 interest in these properties,” and that “the courts . . . subpoena documents, contracts, signed documents, assets and debits from [the president] as she refuses to provide them to the heirs.” However, it is not apparent from

discretion. *Crosby v. Hunt (In re Estate of Crosby)*, 15 N.W.2d 501, 506 (Minn. 1944) (suitability-determination); *In re Estate of Michaelson*, 383 N.W.2d 353, 355-56 (Minn. App. 1986) (removal). “A district court abuses its discretion by making findings of fact that are unsupported by the evidence, misapplying the law, or delivering a decision that is against logic and the facts on record.” *Bender v. Bernhard*, 971 N.W.2d 257, 262 (Minn. 2022) (quotation omitted). We address Disterhaft-Cummings’s arguments with respect to each decision in turn below.

I.

Disterhaft-Cummings first challenges the district court’s decision not to appoint her as the personal representative on the ground that she had priority under Minn. Stat. § 524.3-203. Minnesota’s version of the Uniform Probate Code (MUPC) governs appointments of personal representatives. Minn. Stat. § 524.3-203. Potential representatives are accorded priority for appointment in the following order:

- (1) the person with priority as determined by a probated will including a person nominated by a power conferred in a will;
- (2) the surviving spouse of the decedent who is a devisee of the decedent;
- (3) other devisees of the decedent;
- (4) the surviving spouse of the decedent;
- (5) other heirs of the decedent;
- (6) . . . any creditor;
- (7) . . . any conservator of the decedent who has not been discharged.

the record that she raised these issues below and, if she did, the district court did not address them. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that appellate courts generally address only those questions previously presented to and considered by the district court). Therefore, these issues are forfeited.

Id. (a)(1)-(7). However, “[n]o person is qualified to serve as personal representative” whom a district court “finds unsuitable in formal proceedings.” *Id.* (f)(2); *see also Crosby*, 15 N.W.2d at 505 (“Unsuitability is now a ground for refusing appointment, whereas formerly it was only a ground for removal of an executor.”).

The MUPC does not define “suitable” and the word “has no fixed and inflexible meaning.” *Crosby*, 15 N.W.2d at 506. A district court determines “suitability” by analyzing an individual’s “temperament, experience, and sagacity to discharge the trust with fidelity, prudence, and promptness[,] . . . having regard to the special conditions of each estate and those interested in it as creditors, legatees, and next of kin.” *Id.* (quotation omitted).

Here, for two reasons, the district court did not abuse its discretion when it found Disterhaft-Cummings unsuitable to serve as the personal representative. *See* Minn. Stat. § 524.3-203(f)(2). First, the district court explicitly found Disterhaft-Cummings’s testimony regarding her suitability not credible, and we defer to the district court’s credibility determinations. *See Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). Second, the district court determined Disterhaft-Cummings was “unsuitable” because “[t]he evidence overwhelmingly show[ed] [Disterhaft-Cummings had] difficulty in working with anyone to preserve the estate, as she often [was] uncooperative and obtuse.” These findings were well-supported by the president’s and Disterhaft’s testimony, and record evidence that documented Disterhaft-Cummings’s disrespectful and uncooperative communication about the estate.

For these reasons, we conclude that the district court did not abuse its discretion when it determined Disterhaft-Cummings was unsuitable and, accordingly, denied her petition for appointment as the personal representative.

II.

Disterhaft-Cummings next argues the district court abused its discretion when it denied her petition to remove Navigator as the personal representative, arguing that Navigator was “wasting the estate’s money,” “rude, unprofessional to the heirs,” and “disrespectful to [the heirs].”

Under Minn. Stat. § 525.3-611(a), “[a] person interested in the estate may petition for removal of a personal representative for cause at any time.” A petitioner has cause for removal when:

removal is in the best interests of the estate, or if it is shown that a personal representative or the person seeking the personal representative’s appointment intentionally misrepresented material facts in the proceedings leading to the appointment, or that the personal representative has disregarded an order of the court, has become incapable of discharging the duties of office, or has mismanaged the estate or failed to perform any duty pertaining to the office.

Minn. Stat. § 525.3-611(b).

Here, Disterhaft-Cummings petitioned for removal only two days after Navigator became the personal representative and the district court had not yet issued the Letters of General Administration to allow Navigator to act as the personal representative. *See* Minn. Stat. § 524.3-103 (“[T]o acquire the powers and undertake the duties and liabilities of a personal representative of a decedent, a person must be appointed by order of the court or

registrar, qualify and be issued letters. Administration of an estate is commenced by the issuance of letters.”). The record amply supports the district court’s determination that, during those two days, nothing occurred to warrant removing Navigator as the personal representative. And Disterhaft-Cummings does not point to any evidence demonstrating that the district court acted contrary to logic and the facts in record. Accordingly, we conclude the district court did not abuse its discretion when it denied Disterhaft-Cummings’s petition for removal.

Affirmed.