

*This opinion is nonprecedential except as provided by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
A24-1208**

Mitchell David Schultz, et al.,
Appellants,

vs.

Christine Marie Schultz,
Respondent.

**Filed March 31, 2025
Affirmed
Bond, Judge**

Ramsey County District Court
File No. 62-HG-CV-24-1868

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Considered and decided by Bjorkman, Presiding Judge; Reyes, Judge; and Bond,
Judge.

NONPRECEDENTIAL OPINION

BOND, Judge

Appellants initiated an eviction action against respondent. Respondent is appellants' sibling and the personal representative of the parties' mother's estate. The district court dismissed appellants' eviction action, determining that the issue of respondent's present right to possess mother's residential property could be determined in

a pending probate proceeding. Appellants appeal the district court's dismissal of the eviction action. We affirm.

FACTS

Appellants Mitchell David Schultz and Linda L. Schultz and respondent Christine Marie Schultz are siblings. In November 2023, the parties' mother executed a transfer-on-death deed (TODD) conveying her St. Paul home to appellants upon her death. Mother died in March 2024. Shortly after mother died, respondent moved into the home.¹

In May 2024, respondent commenced a probate action by filing a petition for adjudication of intestacy, determination of heirs, and appointment as special administrator of mother's estate. In the probate action, respondent challenged the validity of the TODD on the basis that mother was legally blind at the time it was executed. The district court in the probate action formally appointed respondent as special administrator of mother's estate.

In June 2024, appellants filed an eviction action against respondent, alleging that respondent's current possession of the home was unlawful. Appellants acknowledged that the home was a subject of the probate action. But appellants claimed, both in their complaint and at a later hearing before the district court, that regardless of the probate court's ruling on the validity of the TODD, respondent had no legal right to current

¹ In the district court, respondent argued that she had lived in the home and cared for mother for nearly ten years and was out of town when mother died. Appellants argued that whether, and for how long, respondent lived in the home prior to mother's death was a disputed factual issue. Because the district court dismissed the complaint as improperly brought in housing court, it made no findings on that issue.

possession of the home. Specifically, appellants argued that if the probate court found the TODD to be valid, respondent would not have legal right to possess the home; if the probate court found the TODD to be invalid, the home would pass to mother's estate.

For her part, respondent argued that as special administrator, she was responsible for caring for the estate's assets. Respondent argued that the probate court was the proper forum for determining both the validity of the TODD and respondent's current possession of the home. In response to questioning by the district court, appellants agreed that a separate petition could be filed in the probate proceeding to contest respondent's right to possess the home.

The district court dismissed the eviction action without prejudice, concluding that the pending probate proceeding was the appropriate forum for determining issues related to ownership and possession of the home.

This appeal follows.

DECISION

Appellants contend that the district court erred by dismissing their eviction action because the probate proceeding "will not resolve the question of the right to possess" the home.

As an initial matter, the parties dispute the standard of review that we should apply in reviewing the district court's order dismissing the eviction action. Likening the district court's decision to a dismissal on the pleadings under Minn. R. Civ. P. 12.02(e), appellants argue for a de novo standard of review. Respondent does not contest that standard in her brief, but at oral argument suggested that abuse of discretion may be the more appropriate

standard. Assuming without deciding that the district court’s order dismissing the eviction action was a legal determination that we review de novo, we conclude that the district court did not err for three reasons.

First, appellants’ claim that respondent is in unlawful possession of the home can be litigated in the probate proceeding. Eviction actions are limited-scope summary proceedings intended only to evict tenants and recover possession of real property. Minn. Stat. § 504B.001, subd. 4 (2024); *see also Amresco Residential Mortg. Corp. v. Stange*, 631 N.W.2d 444, 445 (Minn. App. 2001). Generally, if the owner of the real property “has the ability to litigate . . . other claims and defenses in alternate civil proceedings, it would be inappropriate . . . to seek to do so in [an] eviction action.” *Fraser v. Fraser*, 642 N.W.2d 34, 40-41 (Minn. App. 2002). Claims are properly within an eviction action “only if the eviction action presents the only forum for litigating” them. *Id.* at 41.

Appellants conceded in the district court that the home was a subject of the probate proceeding and that the issue of respondent’s current right to possess the home could be litigated in the probate proceeding. On appeal, appellants identify no reason why the district court in the probate proceeding would be unable to determine the issue of possession of the home and we discern none from the record. Minn. Stat. § 524.1-302(b) (2024) (providing that the district court in a probate proceeding “has full power to make orders, judgments and decrees and take all other action necessary and proper to administer justice in the matters which come before it”); *see also In re Est. of Sangren*, 504 N.W.2d 786, 789 (Minn. App. 1993) (reiterating that the district court in a probate proceeding has the “power to hear and finally dispose of all matters relevant to determination of the extent

of the decedent’s estate and of the claims against it” (quoting Unif. Prob. Code § 3-105 cmt. d (1991))), *rev. denied* (Minn. Oct. 28, 1993). Because appellants can litigate questions relating to the possession of the home in the pending probate proceeding, the district court did not err by dismissing the eviction action.

Second, respondent is special administrator of mother’s estate. “A special administrator appointed by order of the court in any formal proceeding has the power of a general personal representative except as limited in the appointment and duties as prescribed in the order.” Minn. Stat. § 524.3-617 (2024). “[S]pecifically devised real property is ‘subject to . . . administration’ by the personal representative.” *In re Est. of Zych*, 983 N.W.2d 466, 472 (Minn. App. 2022) (quoting Minn. Stat. § 524.3-101 (2022)).² During the administration of an estate, a personal representative “has a right to, and shall take possession or control of, the decedent’s property.” Minn. Stat. § 524.3-709 (2024). Here, the district court in the probate proceeding is best suited to determine whether respondent’s possession of the home in her capacity as special administrator is “reasonably necessary for the management, protection and preservation of” the estate. *Id.*³

² This language is unchanged in the most recent version of the statute. Minn. Stat. § 524.3-101 (2024).

³ At oral argument, appellants argued for the first time that “possession” within the meaning of section 524.3-709 is distinct from what appellants characterize as a personal representative’s “rent-free occupancy without a lease.” Because appellants raised this issue for the first time at oral argument, we decline to address it. *In re Civ. Commitment of Froehlich*, 961 N.W.2d 248, 255 (Minn. App. 2021) (“We generally will not address an argument raised for the first time at oral argument.”). We also observe that the record on appeal contains no findings related to either the existence of a lease or payment of rent.

Third, the district court in the probate proceeding is tasked with determining the validity of the TODD. Minn. Stat. § 507.071, subd. 26 (2024) (“[I]ssues of interpretation or validity of the transfer-on-death deed . . . shall be determined in the probate division.”). Validity of the TODD, in turn, will determine ownership of the home. Thus, appellants’ ability to bring an eviction action in the first instance may depend on the outcome of the probate proceeding. *Gallagher v. Moffet*, 46 N.W.2d 792, 793 (Minn. 1951) (“An unlawful detainer action merely determines the right to present possession and does not adjudicate the ultimate legal or equitable rights of ownership possessed by the parties.”); *see also* Minn. Stat. § 504B.285, subd. 1(a) (2024) (providing that “[t]he person entitled to the premises may recover possession” of the property in an eviction action). Contrary to appellants’ argument, ownership of the home and the right to possess the home are related issues that can—and in the case of the TODD, must—be brought in the probate proceeding.

Because respondent’s right to possess the home is an issue that may be brought in the pending probate proceeding, the district court did not err in dismissing the eviction action.⁴

Affirmed.

⁴ Appellants alternatively argue that, even if the probate action would determine current right of possession, the district court should have stayed the eviction action rather than dismiss it. But in the district court, appellants did not request a stay as an alternative to dismissal. “A reviewing court must generally consider only those issues that the record shows were presented and considered by the trial court in deciding the matter before it.” *Thiele v. Stich*, 425 N.W.2d 580, 582-83 (Minn. 1988); *see also Hoyt Inv. Co. v. Bloomington Com. & Trade Ctr. Assocs.*, 418 N.W.2d 173, 175 (Minn. 1988) (“[A]n undecided question is not usually amenable to appellate review.”). Therefore, this issue is not properly before us and we decline to address it for the first time on appeal.