This opinion is nonprecedential except as provided by Minn.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
A25-0325

In re the Supervised Estate of Mary Catherine Swartout, Deceased.

Filed September 22, 2025
Affirmed
Worke, Judge

Hennepin County District Court
File No. 27-PA-PR-21-181

Robert H. Leibman, Bloomington, Minnesota (for appellant Seth Edward Bjergo, Personal Representative of the Estate of Arnold John Bjergo)

Peter Gleekel, Scott A. Jurchisin, Larson • King, LLP, St. Paul, Minnesota (for respondent First Fiduciary Corporation)

Considered and decided by Worke, Presiding Judge; Reyes, Judge; and Reilly, Judge.*

NONPRECEDENTIAL OPINION

WORKE, Judge

In this probate dispute, appellant argues that the district court (1) misunderstood certain insurance coverage, (2) made findings of fact about a boat sale that are unsupported by the record, (3) failed to find that the decedent's sale of a business interest was unfair and unreasonable, (4) failed to find that the personal representative breached its fiduciary duties, (5) should not have awarded the personal representative all of its claimed fees and

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* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

attorney fees, and (6) should have applied a higher standard to a personal representative with special skills. We affirm.

FACTS

Mary Catherine Swartout (Mary) died intestate in December 2020.[1] Mary was survived by her husband, Arnold Bjergo (Arnold), and her son, appellant Seth Edward Bjergo. Approximately 13 years before Mary's death, Mary moved out of the marital home and began a romantic relationship with a new partner (Mary's partner).

In February 2021, Arnold petitioned the district court for a formal adjudication of intestacy, determination of heirs, and formal appointment of a personal representative. The district court determined that Mary died intestate and that Arnold was her sole heir. Arnold and Mary's partner stipulated to the appointment of respondent First Fiduciary Corporation (PR) as the personal representative. The PR petitioned to allow final accounting in November 2022. Arnold filed an objection, alleging that the PR committed multiple instances of statutory breach.

In April 2023, Arnold died. Bjergo was appointed special administrator of Arnold's estate and amended Arnold's objection. At trial, Bjergo argued that the PR breached its fiduciary duty by mishandling an insurance policy, the sale of Mary's boat and trailer, and the sale of Mary's shares in a family-held business, the Continental Clay Corporation (CCC). Bjergo also argued that the PR's requested fees were excessive and unreasonable.

[1] Mary's death was ruled a suicide.

Following a court trial, the district court found that the PR did not violate its fiduciary duties in handling Mary's estate. The district court found that the PR obtained the terms of Mary's insurance policy and properly determined that the estate did not have a valid claim. The district court also determined that the record showed that Mary intended to sell her boat and trailer, and that the sale of Mary's CCC shares was fair and reasonable. The district court awarded the PR its requested costs and attorney fees, finding that the fees were reasonable. Bjergo now challenges the district court's determinations in this appeal.

DECISION

In a probate action, this court reviews a district court's factual findings for clear error and its legal conclusions de novo. *In re Estate of Short*, 933 N.W.2d 533, 537 (Minn. App. 2019). A finding of fact is clearly erroneous if it is "manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021) (quotation omitted). When applying the clear-error standard of review, appellate courts (1) view the evidence in a light favorable to the findings; (2) do not reweigh the evidence; (3) do not find their own facts; and (4) do not reconcile conflicting evidence. *Id.* at 221-22. "When the record reasonably supports the findings at issue . . . , it is immaterial that the record might also provide a reasonable basis for inferences and findings to the contrary." *Id.* at 223 (quotation omitted).

Insurance policy

Bjergo argues that a vehicle loan was subject to a credit life-insurance policy and that the loan could have been paid off under the terms of the insurance policy, but the PR did nothing about it. Bjergo argues that the district court clearly erred in finding that there was no insurance coverage. Here, whether there was insurance coverage is a factual issue that we review for clear error. *See Short*, 933 N.W.2d at 537. We conclude that the district court's finding is reasonably supported by the record. *See Kenney*, 963 N.W.2d at 221.

The record shows that the insurance policy became effective on December 26, 2019, and that Mary died by suicide less than one year later, on December 22, 2020. Following Mary's death, the insurance company initially denied the claim on grounds that the policy did not cover an event "occurr[ing] within six months immediately following the effective date of protection, unless it results from an accidental injury," and that Mary's "death was not due to an accident." Because Mary died after the six-month coverage limit described in the letter, the PR investigated the claim.

The insurance carrier then provided the PR a copy of its consumer product sheet (CPS) that describes the terms of the carrier's policy options. The CPS states that "[a] death event . . . is not protected if it . . . is the result of suicide that occurs within the 12 months immediately following the Effective Date." Additionally, the CPS contains two dates that indicate that it applies to Mary's policy. In the document's header, it states, "Plans as of 3/18/2023," and in the footer it states "REV (05/2016)." The "Plans as of" date is two days prior to the PR's receipt of the CPS, indicating that the policy provisions were current as of the PR's receipt of the document. The PR testified, and the district court found, that "REV (05/2016)" indicates that the policy was revised in May 2016. This supports the finding that the CPS accurately conveyed the policy's terms because the CPS did not change between May 2016 and March 2023, and Mary purchased the policy within that timeframe.

Finally, the PR testified that, in a phone call, the insurance company "admitted . . . that the [denial] letter was not properly written," and that "the reason [the claim] was denied is because the death wasn't accidental, the death certificate ruled suicide and . . . there was a suicide rider that took effect after one year."

Bjergo argues that the PR should have obtained a copy of the actual policy because the CPS is an insufficient substitute, and the only valid writing is the denial letter stating that the policy does not cover non-accidental deaths within six months of the effective date. He also contends that the CPS displays an "effective date of March 18, 2023," rendering it "clearly inapplicable" to Mary's 2019 policy, and that the PR conceded at trial that "the estate has nothing in writing from the insurer that validly denies the claim." Bjergo's arguments are unpersuasive.

First, he misstates the record. The CPS contains an "as of" date that corresponds with the date it was transmitted to the PR, not an "effective date." And it does not appear that the PR conceded a lack of a valid, written denial. Bjergo bases his assertion on his counsel's cross-examination of the PR:

> Q: And as we sit here today, the estate has nothing in writing from this insurer that validly denies the claim, right?
> A: No.
> Q: What does the estate have that validly denies the claim in writing?
> A: I believe we can rely on the [CPS] as enough proof to not pursue and incur additional administrative costs to pursue potentially the insurance form and have them restate a letter that was already written that they had flagged as being incorrect.

It appears that the PR responded "no" to the attorney's use of the question tag "right?" And in the very next response explained that the CPS was sufficient proof of a valid denial.

Second, Bjergo cites no authority for his assertion that the CPS is an insufficient means of confirming the policy's terms. But even if he did, the district court found that the PR confirmed the terms of the policy in a phone call with the insurance carrier, and that the denial letter was incorrect. Thus, Bjergo functionally asks us to reweigh and reconcile the conflicting evidence of the PR's testimony and the denial letter, among other things, which we do not do when applying the clear-error standard of review. *See id.* at 221-22.

The PR ascertained that the insurance company's initial denial misstated the policy's limitations but that the claim was nonetheless not covered. The district court found that the PR's assertion that an investigation was conducted was credible. *See* Minn. R. Civ. P. 52.01 (stating that we give due regard to district court's opportunity to judge credibility of witnesses and will not disturb district court's credibility determinations). Because the record supports the district court's finding regarding the insurance policy, Bjergo fails to show clear error.

Boat and trailer

Bjergo next argues that the district court clearly erred in finding that Mary sold her boat and trailer to J.T. because there was "overwhelming evidence" that the sale did not occur. It appears that Bjergo's argument is based on a misunderstanding of the district court's findings, because the district court found that Mary "*intended* to sell her boat and trailer to [J.T.]" but that "the sale was not complete." (Emphasis added.)

The PR had obtained information that Mary sold her boat and trailer prior to her death. The PR did not possess the title to either asset but determined that neither title had been transferred. The purported buyer contacted the PR and provided photocopies of the titles that appeared to bear Mary's signature but declined to provide additional documentation. The PR commissioned a forensic handwriting analysis to determine whether the signatures on the titles were Mary's signatures. The analysis indicated that the signatures "probably" belonged to Mary. The district court ordered that the purported buyer be given first opportunity to purchase the boat and trailer, and that if the buyer declined, that title would be transferred to Arnold's estate. The record supports the district court's finding that a sale was intended but not completed.

CCC stock

Bjergo argues that the district court clearly erred in finding that the sale of Mary's CCC shares was fair and reasonable.

The record shows that, prior to Mary's death, CCC shareholders executed a buy/sell agreement that set forth the process for the sale of a shareholder's shares in the event of their death. The agreement required, among other things, that upon a shareholder's death, share prices would be determined by three appraiser valuations.

CCC commissioned a valuation from BEAR Business Valuation LLC (the BEAR valuation) and provided the report to the PR. The PR provided the valuation to Arnold, who instructed the PR to consult with Mary and Arnold's accountant to determine whether the valuation was reasonable. The accountant opined that the valuation appeared to be reasonable but acknowledged that he did not review the report. The PR informed Arnold of the accountant's opinion and indicated that, if Arnold did not object, the PR would accept the BEAR valuation and proceed with the sale. Arnold did not object and the sale was finalized. The district court found that the sale was fair and reasonable.

Bjergo argues that the district court "failed to recognize" that (1) the buy/sell agreement required three valuations to determine the share price, (2) the appraiser applied discounts to the valuation of the shares that were not described in the agreement, and (3) the agreement required that an appraiser rely on the prior valuation as a "reference point" in determining the current share value, and the BEAR valuation failed to do so.

The district court found that Arnold waived the valuation requirement by failing to object after hearing the accountant's opinion. The district court did not make findings as to the applied discounts or the use of a "reference point" valuation. Thus, Bjergo argues that the district court's finding regarding Arnold's waiver is manifestly contrary to the evidence. We conclude that it is not.

The PR testified that the BEAR valuation was presented to Arnold through Arnold's attorney, and Arnold instructed the PR to communicate with Arnold's accountant to discuss whether the accountant considered the valuation reasonable, or if he recommended obtaining another valuation. The PR testified that, based on a conversation with the accountant, there was no reason to believe that the valuation was unreasonable. The PR also testified that the accountant's assessment was communicated to Arnold, and Arnold was told to voice any objection. When Arnold did not object, the PR determined that Arnold approved of the valuation and proceeded with the sale.

The PR's testimony is corroborated by emails in the record. In November 2021, the PR's attorney emailed Arnold's attorney and stated that "[a]t your suggestion, [the PR] communicated with [the accountant] who without reviewing the report opined the valuation as reasonable." The PR's attorney added that "the PR considers the proposal acceptable and intends to communicate acceptance of the [valuation] report by the end of the month." A valuation was obtained. There was no objection to the BEAR valuation. The district court found that compliance was waived because there was no objection to the valuation and Arnold had the relevant facts and was represented by an attorney. This record supports the district court's findings.

Breach of fiduciary duties

"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). 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 (Minn. 2019).

Insurance policy

Bjergo argues that the PR breached its duty by failing to investigate the insurance claim and verify coverage against an actual copy of the policy. Bjergo cannot establish that the PR breached its duty because, as we already concluded, the PR conducted a proper investigation and did not need the actual policy to determine coverage.

Boat and trailer

Bjergo argues that that PR committed breach because, despite "overwhelming evidence" that the sale was a "sham," the PR (1) failed "early on" to move the court for an order to take possession of the boat and trailer, and (2) wasted time and fees investigating the sale.

Bjergo's evidence of a "sham" appears to merely be that J.T. provided a photocopy of titles purportedly signed by Mary and declined to surrender the original title and produce other documentation of a sale. This evidence may raise suspicion concerning the sale, but it is hardly overwhelming evidence of fraud. Furthermore, based in part on this same evidence, the district court found that the sale was an intended-but-incomplete sale, *not* that it was a sham.

The record suggests that the PR conducted a consistent, reasonable investigation of the purported sale. "A personal representative is under a duty to settle and distribute the estate . . . in accordance with . . . applicable law . . . as expeditiously and efficiently as is consistent with the best interests of the estate." Minn. Stat. § 524.3-703(a) (2024). A personal representative has a duty "to evaluate and pursue claims that would benefit the estate." *Prof'l Fiduciary, Inc. v. Silverman*, 713 N.W.2d 67, 71 (Minn. App. 2006), *rev. denied* (Minn. July 19, 2006).

In February 2022, Mary's partner informed the PR that Mary sold the boat and trailer. In the weeks that followed, the PR encumbered future transfers by requesting duplicate titles. When the purported buyer came forward, the PR repeatedly requested documentation of the sale. The purported buyer provided photocopies of the titles in May.

The PR forwarded them to Bjergo and informed the district court that ownership of the boat and trailer remained an issue. When Bjergo stated that the handwriting on the titles "is not [Mary's] nor is that her signature," the PR determined a handwriting analysis was necessary.

The district court found that Mary "intended" to sell the assets, but that the sale was not complete. The district court determined that the purported buyer could pay the market value for the boat and trailer or that the assets would go to Arnold's estate. The PR tracked this supposed sale and provided handwriting analysis to prove whether Mary intended the sale. We conclude that there was no breach.

CCC

Bjergo argues that the PR breached its fiduciary duty by unreasonably relying on CCC's self-serving valuation, failing to enforce the terms of the buy/sell agreement, and failing to obtain an independent review of the valuation. Ultimately, the issue is whether the PR acted in the best interests of the estate by approving the BEAR valuation and selling the shares.

As described above, the record supports the conclusion that the PR did not breach a fiduciary duty. Bjergo asserts that a report by his own appraiser shows that the sale price was too low. The district court found that Bjergo's appraiser did not have access to any of CCC's records and did not calculate a fair market value as required by the agreement. By contrast, the PR testified that obtaining an additional appraisal would result in costs to the estate, and that, after consulting with counsel, it was determined that the discounts applied in the BEAR valuation were not necessarily prohibited. Bjergo, again, fails to show a breach.

Fees

Bjergo argues that the district court erred in awarding the PR its requested costs and attorney fees. We review a district court's award of attorney fees for an abuse of discretion. *In re Est. & Tr. of Anderson*, 654 N.W.2d 682, 688 (Minn. App. 2002), *rev. denied* (Minn. Feb. 26, 2003). "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." *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022) (quotation omitted).

The district court found that the fees were reasonable given the complexities of the domestic arrangements, the removal of assets that occurred prior to the PR's involvement, Arnold's and Bjergo's requests that every asset be itemized, Arnold's and Bjergo's objections, and Arnold's death. The record supports the district court's findings.

Bjergo argues primarily that the case was not complex and that the fees were largely incurred *because* the PR mishandled assets and breached its duty. But the district court determined that the fees were reasonable due to the complexity of the matters and Arnold's and Bjergo's demands for information and itemization. The district court did not abuse its discretion in awarding the PR costs and attorney fees.

Standard of care

Finally, Bjergo argues that Minn. Stat. § 524.3-703(a) provides for a higher standard of care for a personal representative possessing "special skills." The statute provides:

> A personal representative is a fiduciary who shall observe the standards of care in dealing with the estate assets that would be observed by a prudent person dealing with the property of another, *and if the personal representative has special skills or is named personal representative on a basis of representation of special skills or expertise, the personal representative is under a duty to use those skills*.

Minn. Stat. § 524.3-703(a) (emphasis added).

The district court stated generally that it applied section 524.3-703(a), but it did not expressly state that it considered the PR's "special skills" in determining whether the PR met its standard of care. Bjergo argues that, as a professional fiduciary, the PR possesses the special skills contemplated in the statute. He claims that we should infer that the district court failed to hold the PR to the higher standard because the district court did not find that the PR breached its duty despite the PR's mishandling of assets. Based on the analysis above, we decline to reach this issue because we conclude that the PR did not beach its fiduciary duties.

Affirmed.