

NO. A12-335

State of Minnesota
In Court of Appeals

IN RE THE ESTATE OF:

JOHN KENNETH RUTT, a/k/a JOHN K. RUTT
and JOHN RUTT,

Deceased.

RESPONDENTS' BRIEF AND APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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STATEMENT OF THE ISSUES

- I. Whether the district court properly concluded that, pursuant to the plain and unambiguous language of Minn. Stat. § 549.09, a 10% interest rate should be applied to the \$73,592.00 judgment against Appellants David J. Rutt and Peter F. Rutt (“collectively “Appellants”), which represented the funds Decedent John Kenneth Rutt (“Decedent”) deposited into an account with Voyager Bank that was wrongfully retained by Appellants (“Voyager Account Judgment”), and the \$80,000.00 judgment against Appellant David J. Rutt, which represented the court-determined difference between the court-determined market value and the price paid by Appellant David J. Rutt for Decedent’s lake cabin (“Lake Cabin Judgment”), since both judgments were entered after August 1, 2009 and are in amounts over \$50,000, and whether the district court properly calculated prejudgment interest from the commencement of Decedent’s probate estate on September 10, 2006.

Most apposite statutory provisions:

- Minn. Stat. § 549.09, subd. 1(b) (2011).
Minn. Stat. § 549.09, subd. 1(c)(2) (2011).
Minn. Stat. § 645.08(1) (2011).
Minn. Stat. § 645.16 (2011).

Most apposite cases:

- Alpine Glass, Inc. v. Am. Family Ins. Co., 2010 WL 5088188 (D. Minn. Dec. 7, 2010).¹
Hans Hagen Homes, Inc. v. City of Minnetrista, 728 N.W.2d 536 (Minn. 2007).
Am. Family Ins. Group v. Schroedl, 616 N.W.2d 273 (Minn. 2000).
Solid Gold Realty, Inc. v. Mondry, 399 N.W.2d 681 (Minn. App. 1987).

- II. Whether the district court properly exercised its discretion and refused to hear evidence regarding the re-appraisal and re-valuation of the lake cabin and the amount of the account receivable owed to the Estate of John Kenneth Rutt, a/k/a John K. Rutt and John Rutt (“Estate”) by Appellant David J. Rutt, since those issues had already been fully explored at trial and on the first appeal, constituted the “law of the case” that could not be re-litigated, and were outside the scope of the Court of Appeals’ remand.

¹ A true and correct copy of this unpublished opinion is included in Respondents’ Appendix at Resps.’ App. 68-71.

Most apposite cases:

Halverson v. Village of Deerwood, 322 N.W.2d 761 (Minn. 1982).

Hamilton v. Killian, 207 N.W.2d 703 (Minn. 1973).

In re Estate of Rutt, No. A09-2336 (Minn. App. Oct. 12, 2010), review denied (Minn. Dec. 22, 2010).

Kornberg v. Kornberg, 525 N.W.2d 14 (Minn. App. 1994).

- III. Whether Appellants' appeal of the distribution of the Estate's personal property is untimely, and if not untimely, whether the district court properly exercised its discretion by refusing to hear evidence regarding the distribution of the Estate's personal property, since it had already been established as the "law of the case."

Most apposite cases:

Mattson v. Underwriters at Lloyds, 414 N.W.2d 717 (Minn. 1987).

Hamilton v. Killian, 207 N.W.2d 703 (Minn. 1973).

Kornberg v. Kornberg, 525 N.W.2d 14 (Minn. App. 1994).

A. How the Issues were Raised Below:

The issues in this appeal were presented to the district court upon remand from the Court of Appeals, after the first appeal in this case, to amend the final accounting to reflect the attorney-fee award in favor of Respondents Carol Breeggemann, JoAnne Ege, Jeanette Hentges, Marsha Markstrom, Rosemary Schmitt, and Paula Corrigan (collectively "Respondents"), and against the Estate, rather than against Appellants personally. Appellants made oral arguments to the district court at the February 1, 2011 hearing and submitted letter briefs to the district court after the hearing, arguing that the district court improperly applied a 10% interest rate to the \$73,592.00 Voyager Account Judgment and the \$80,000.00 Lake Cabin Judgment and erred when it denied Appellants' requests to submit additional evidence regarding the re-appraisal and re-valuation of the lake home and the distribution of the Estate's personal property.

B. The District Court's Ruling:

By Order of Formal Appointment of Successor Personal Representative filed March 31, 2011 ("March 31 Order"), the Honorable Richard C. Perkins, Judge of Carver County District Court, First Judicial District, stated that there was no order mandating the sale of personal property, just in exchange as earlier ordered in the district court's Order on Motions dated August 20, 2009 ("2009 Order on Motions"), denied a re-appraisal and re-valuation of the cabin and lakeshore property requested by Appellants, since the issue had been decided in the earlier appeal, and ordered that the interest rate on the \$73,592.00 Voyager Account Judgment and the \$80,000.00 Lake Cabin Judgment be calculated at 10% from the commencement of Decedent's probate estate on September 10, 2006. (Order of Formal Appointment of Successor Pers. Representative (Mar. 31, 2011) ("March 31 Order"); ADD-1-ADD-3.)

On December 21, 2011, upon the request of Respondents, the district court filed its Order for Judgment ("December 21 Judgment"), which caused the following relevant judgments to be entered in favor of the Estate and against Appellants:

- \$121,803.33 judgment against Appellant David J. Rutt, which represented the original \$80,000.00 Lake Cabin Judgment including 10% interest through December 31, 2011;
- \$112,051.98 judgment against Appellants jointly and severally, which represented the original \$73,592.00 Voyager Account Judgment including 10% interest through December 31, 2011;
- \$10,940.15 judgment against Appellant David J. Rutt, which represented the amount of personal property he purchased from the Estate during the bidding process among the Estate's heirs; and

- \$6,031.15 judgment against Appellant Peter F. Rutt, which represented the amount of personal property he purchased from the Estate during the bidding process among the Estate's heirs.

(Order for J. (Dec. 21, 2011) ("December 21 Judgment"); ADD-4.)

C. How the Issues were Preserved for Appeal:

On February 21, 2012, Appellants filed their Joint Notice of Appeal to Court of Appeals, seeking judicial review of the district court's March 31 Order and December 21 Judgment. (Joint Notice of Appeal to Court of Appeals (Feb. 21, 2012); A-37–A-38.)

Specifically, Appellants sought review of three issues:

- the district court's application of a 10% interest rate to the \$73,592.00 Voyager Account Judgment against Appellants, jointly and severally, and the \$80,000.00 Lake Cabin Judgment against Appellant David J. Rutt;
- the district court's refusal to hear evidence that its valuation of the lake cabin contained alleged "mistakes," after the Court of Appeals had already affirmed the district court's valuation on the first appeal; and
- the district court's refusal to hear additional evidence regarding the distribution of the Estate's personal property.

(Statement of the Case of Appellant, ¶ 5 (Feb. 21, 2012); A-41.)

On March 30, 2012, the Court of Appeals filed an Order questioning whether it had jurisdiction to hear the appeal, and specifically questioning whether the March 31 Order was an immediately appealable order and whether Appellants' appeal was timely. (Order, No. A12-335 (Mar. 30, 2012); A-44–A-47.) Both Appellants and Respondents submitted jurisdictional memoranda to the Court. By Order dated May 1, 2012, the Court of Appeals decided that the March 31 Order was not immediately appealable, since the December 21 Judgment was necessary to give it effect. (Order, No. A12-335 (May 1,

2012); A-48–A-50.) Therefore, Appellants’ appeal was deemed timely and properly taken from the December 21 Judgment. (Id.)

STATEMENT OF THE CASE

This is an appeal from the March 31 Order and December 21 Judgment issued by the Honorable Richard C. Perkins, Judge of Carver County District Court, First Judicial District. (March 31 Order; ADD-1–ADD-3; December 21 J.; ADD-4.) In the March 31 Order, the district court determined that a 10% interest rate was properly applied to the \$73,592.00 Voyager Account Judgment and the \$80,000.00 Lake Cabin Judgment, refused to allow Appellants to present additional evidence regarding the re-valuation and re-appraisal of the lake home, and denied Appellants’ request to re-address the distribution of the Estate’s personal property. (March 31 Order; ADD-1–ADD-3.) The district court entered judgments in favor of the Estate and against Appellants, with interest calculated through December 31, 2011, via the December 21 Judgment, from which Appellants now appeal. (December 21 J.; ADD-4.)

STATEMENT OF THE FACTS

Decedent died on September 10, 2006 and was survived by his eight children: Appellants, his two sons, and Respondents, his six daughters. See In re Estate of Rutt, No. A09-2336, 2; A-11. During the supervised administration of Decedent’s Estate, issues arose regarding whether certain property in the possession of Appellants was property of the Estate. Id.

On March 24, March 26, and April 7, 2009, the district court held an evidentiary hearing on the final account of the Estate. Upon the conclusion of the evidentiary

hearing, the district court determined that Appellants breached the fiduciary duties they owed to Decedent and directed that the final account include as Estate assets: (1) \$13,500 as an account receivable due the estate from Appellant David J. Rutt, representing the proceeds he received from the sale of Decedent's van ("Van Judgment"); (2) \$73,592 Voyager Account Judgment, which represented the amount deposited into the Voyager Bank account, as an account receivable due from Appellants, jointly and severally; and (3) \$80,000 Lake Cabin Judgment, which was an account receivable from Appellant David J. Rutt, representing the court-determined difference between the court-determined market value and the price paid by Appellant David J. Rutt for Decedent's lake home prior to Decedent's death. (2009 Order on Mots. at ¶ 1 (Aug. 20, 2009).) The district court also granted Respondents' request for attorneys' fees and ordered a judgment in the amount of that award against Appellants personally. (Id. at ¶ 8.) The 2009 Order on Motions was reduced to final judgment via the October 27, 2009 Order and Judgment. (Order and J. (Oct. 27, 2009); Resps.' App. 46-48.) Appellants subsequently appealed the 2009 Order on Motions and the October 27, 2009 Order and Judgment.

On the first appeal in this matter, Court of Appeals No. A09-2336, Appellants specifically challenged the district court's imposition of the \$80,000 Lake Cabin Judgment. In re Estate of Rutt, No. A09-2336, 14; A-23. In addressing Appellants' challenge and finding the district court did not exceed its authority in valuing the lake cabin and creating the account receivable, the Court of Appeals specifically stated:

David Rutt does not complain about retaining ownership of the lake home; nor has he demonstrated that he is in a worse position financially than he would be if the sale of the home were rescinded. Following rescission, the

home likely would be purchased from the estate—either by David Rutt or by one or more of the respondents who expressed interest in the property during decedent’s lifetime—at the appraised price. Appellants argued to the district court that the home is worth less than the appraised value, citing the lower value assigned by taxing authorities and the difficulty of appraising lake property in northern Minnesota. But we conclude that the district court’s valuation finding is not clearly erroneous.

(Id. at 15-16; A-24–A-25 (emphasis added).)

The Court of Appeals ultimately affirmed the district court’s decisions to include the Van Judgment, Lake Home Judgment, and Voyager Account Judgment in the final account, deny Appellants’ request to submit additional evidence, and award attorneys’ fees to Respondents. (Id. at 12-16; A-21–A-25.) However, the Court of Appeals reversed the attorneys’ fees judgment against Appellants personally, directed that the attorneys’ fees should be recovered from the Estate, and remanded for further proceedings. (Id. at 16; A-25.) The Court of Appeals specifically stated that the “further proceedings . . . may include amendment of the final accounting to reflect the attorney-fee award.” (Id.)

Appellants subsequently petitioned the Minnesota Supreme Court for review of the Court of Appeals’ decision, but the Supreme Court denied Appellants’ petition. (Order, Court of Appeals No. A09-2336 (Dec. 22, 2010); Resps’ App. 49.)

Upon remand to the district court, and as a result of the Court of Appeals’ decision, the district court held a hearing on February 1, 2011 to amend the final accounting to reflect the attorneys’ fee award payable by the Estate. (Tr. of Hr’g (Feb. 1, 2011); Resps.’ App. 50-61.) At the hearing, Appellants discussed the payments they owed to the Estate and attempted to reargue the district court’s valuation of the lake

cabin:

[APPELLANTS' ATTORNEY]: . . . The issue will be the \$80,000.00 that was put on the value of the cabin and that is something that we would like to bring to the judge's attention. We believe a mistake was made on the value of that cabin which affects the \$80,000.00. Other than that we are prepared to make the payments.

THE COURT: Well, I think that horse not only left the barn but has been re-corralled. I'm not going to readdress something that has been decided and passed upon by the Court of Appeals. I don't intend to go backward on this matter, I intend to proceed forward. So, I will not be addressing any claimed mistake on the valuation; again, that is a done deal. That issue is over.

(Id. at 4:17-5:6; Resps.' App. 53-54 (emphasis added).)

Appellants also argued that the 10% interest rate did not apply to any of the judgments, except the \$80,000 Lake Home Judgment, since all of the other judgments were allegedly less than \$50,000 and Minn. Stat. § 549.09 allegedly only applied to claims as of August 1, 2009. (Id. at 9:2-10:1; Resps' App. 58-59; see Ltr. from Bonnie M. Fleming to the Honorable Richard C. Perkins (Feb. 11, 2011); A-26–A-27; Ltr. from Bonnie M. Fleming to the Honorable Richard C. Perkins (Feb. 15, 2011); A-28–A-29; Ltr. from Bonnie M. Fleming to the Honorable Richard C. Perkins (Feb. 23, 2011); A-34–A-36.) Finally, Appellants argued that the Estate's personal property should be sold at auction, rather than distributed among Decedent's heirs pursuant to the previously agreed-upon bidding process. (Ltr. from Bonnie M. Fleming to the Honorable Richard C. Perkins; A-27.)

On March 31, 2011, the district court issued the March 31 Order, which discharged Mary McKendrick as personal representative, stated that there was no order

mandating the sale of personal property, just in exchange as earlier ordered in the district court's 2009 Order on Motions, appointed Respondent Carol Breeggemann and Respondent JoAnne Ege as co-personal representatives, denied a re-appraisal and re-valuation of the cabin and lakeshore property requested by Appellants since the issue had been decided in the earlier appeal, and ordered that the interest rate on the \$73,592.00 Voyager Account Judgment and the \$80,000.00 Lake Home Judgment be calculated at 10%. (March 31 Order; ADD-1–ADD-3.) The memorandum accompanying the March 31 Order provided in relevant part:

1. . . . [T]here is no order which mandates the sale of personal property, just in exchange as ordered earlier;

* * *

3. Re-appraisal of the cabin and lakeshore property—contrary to the position taken by Peter and David, the Court decided that issue as part of its Order dated August 20, 2009; further, the Court of Appeals in affect [sic] affirmed that decision under III and IV (pages 14-16) of its decision dated September 30, 2010; and

4. Interest rate to be applied – the interest rate on two portions of the awarded judgments is calculated at ten percent (10%) per annum given the date of entry and amount[.]

(Id.; ADD-3 at ¶¶ 3-4.)

On December 21, 2011, upon the request of Respondents' counsel and since the judgments previously ordered in favor of the Estate and against Appellants had not yet been entered, the district court issued the December 21 Judgment, which reduced to judgment the various amounts, including interest through December 31, 2011, Appellants owed to the Estate. (December 21 J.; ADD-4.) The specific judgments included:

- (1) Judgment against Appellant David Rutt in the amount of \$16,457.08 for the van proceeds;
- (2) Judgment against Appellant David Rutt in the amount of \$121,803.363 for the lake cabin;
- (3) Judgment against Appellant David Rutt and Appellant Peter Rutt, jointly, and severally, in the amount of \$112,051.98 for the Voyager Bank account;
- (4) Judgment against Appellant David Rutt in the amount of \$10,940.15 for personal property purchased from the Estate;
- (5) Judgment against Appellant Peter Rutt in the amount of \$6,031.15 for personal property purchased from the Estate.

(Id.)

Appellants filed their Joint Notice of Appeal to Court of Appeals on February 21, 2012, specifically appealing: (1) whether the district court erred in applying a 10% interest rate to the Lake Cabin Judgment and the Voyager Account Judgment; (2) whether the district court erred in refusing to hear evidence regarding the re-appraisal and re-valuation of the lake cabin; and (3) whether the district court erred in refusing to resolve the issue regarding the distribution of the Estate's personal property. (Joint Notice of Appeal to Court of Appeals; A-37-A-38.)

ARGUMENT

I. THE DISTRICT COURT PROPERLY APPLIED A 10% INTEREST RATE TO THE LAKE CABIN JUDGMENT AND THE VOYAGER ACCOUNT JUDGMENT CALCULATED FROM THE COMMENCEMENT OF DECEDENT'S PROBATE ESTATE, AS REQUIRED BY MINN. STAT. § 549.09.

A. The District Court's Application of Interest Should be Affirmed under the Applicable Standard of Review.

Minn. Stat. § 549.09 plainly and unambiguously provides for the date from which interest shall be computed on and the interest rate applicable to the Lake Cabin Judgment and the Voyager Account Judgment. Issues of statutory construction are questions of law, which this Court reviews de novo. Am. Family Ins. Group v. Schroedl, 616 N.W.2d 273, 277 (Minn. 2000). When interpreting a statute, the Court must first determine whether the statute's language, on its face, is clear or ambiguous. Id. at 277. An ambiguity exists only when a statute's language is subject to more than one reasonable interpretation. Hans Hagen Homes, Inc. v. City of Minnetrista, 728 N.W.2d 536, 539 (Minn. 2007). If the language of the statute is clear and free from ambiguity, courts apply its plain meaning. Id.; see also Minn. Stat. § 645.16 (stating that when the words of a statute are clear, "the letter of the law shall not be disregarded under the pretext of pursuing the spirit"). In determining whether a statute's meaning is unambiguous, courts are to construe words and phrases according to their plain and ordinary meaning. Minn. Stat. § 645.08(1); Schroedl, 616 N.W.2d at 277.

Decedent's probate estate commenced on September 10, 2006, the date of Decedent's death, and thus, under Minn. Stat. § 549.09, subd. 1(b), interest was to be

calculated on both the Voyager Account Judgment and the Lake Home Judgment from September 10, 2006. Additionally, since the \$73,592.00 Voyager Account Judgment was a judgment over \$50,000.00, it was appropriate for the district court to apply a 10% interest rate. Accordingly, the district court's calculation of interest on the Voyager Account Judgment and the Lake Home Judgment should be affirmed.

B. The Plain and Unambiguous Language of Minn. Stat. § 549.09, Subd. 1(b) Requires the Calculation of Prejudgment Interest on the Lake Cabin Judgment from the Commencement of Decedent's Probate Estate on September 10, 2006.

Appellants' argument that the district court improperly calculated prejudgment interest on the Lake Cabin Judgment from the commencement of Decedent's probate estate on September 10, 2006 ignores the plain and unambiguous language of Minn. Stat. § 549.09. Minn. Stat. § 549.09, subd. 1(b), specifically provides:

Except as otherwise provided by contract or allowed by law, preverdict, preaward, or prereport interest on pecuniary damages shall be computed . . . from the time of the commencement of the action or a demand for arbitration, or the time of a written notice of claim, whichever occurs first[.]

(emphasis added.) This statutory language is clear: prejudgment interest accrues from one of three dates: (1) the date the action commences; (2) the date a demand for arbitration is made; or (3) the date written notice of a claim is provided, whichever occurs first. Id.

Appellants admit in their brief that the probate estate commenced upon Decedent's death on September 10, 2006. (Appellants' Br., p. 8.) This case did not involve an arbitration, so no demand for arbitration was ever made. Appellants further allege that "notice of the claim was not given to Appellant David J. Rutt until April 2009." Id. Out

of these three events, the first to occur was the commencement of Decedent's probate estate on September 10, 2006. Pursuant to Appellants' admissions and the plain and unambiguous language of Minn. Stat. § 549.09, subd. 1(b), prejudgment interest on the Lake Cabin Judgment was required to be computed from September 10, 2006. This is the exact computation made by the district court.

The purposes behind prejudgment interest awards support the use of the earlier date of September 10, 2006, as the date from which prejudgment interest should accrue on the Lake Cabin Judgment. Awards of prejudgment interest are designed to serve two functions: to compensate prevailing parties for the true cost of money damages incurred, and to promote settlements when liability and damage amounts are fairly certain. Solid Gold Realty, Inc. v. Mondry, 399 N.W.2d 681 (Minn. App. 1987); see Glodek v. Rowinski, 390 N.W.2d 477 (Minn. App. 1986). As the district court found, Appellant David J. Rutt took advantage of his relationship with Decedent, in breach of his fiduciary duties, and convinced Decedent to sell him the cabin at \$100,000 below market value immediately prior to Decedent's death. (2009 Order on Mots., Memo. at ¶ B; A-4-A-5 (the district court reduced the Lake Cabin Judgment to \$80,000.00 to reflect the savings inuring to Decedent and the Estate for the transfer and sale being finalized without agency commissions being incurred).) Since September 10, 2006, the commencement of Decedent's probate estate, Appellant David J. Rutt has deprived the Estate (and Respondents, as beneficiaries of the Estate) of the use and value of Decedent's cabin and lakeshore property.

In order to fully compensate the Estate for the damages it incurred as a result of Appellant David J. Rutt's unlawful actions, prejudgment interest should be awarded to it from the date it began to incur the damages—i.e., from the commencement of Decedent's probate estate on September 10, 2006. It would be unfair to the Estate (and Respondents) to allow Appellant David J. Rutt to benefit from his unlawful conduct and receive a windfall in the form of reduced interest on the Lake Cabin Judgment. Accordingly, this Court should affirm the district court's computation of prejudgment interest on the Lake Cabin Judgment from September 10, 2006.

C. **The Plain and Unambiguous Language of Minn. Stat. § 549.09, Subd. 1(c)(2), Applies to the Voyager Account Judgment, Since it is a Judgment over \$50,000.**

Appellants' argument that the district court improperly applied a 10% interest rate to the Voyager Account Judgment also ignores the plain and unambiguous language of Minn. Stat. § 549.09. Minn. Stat. § 549.09, subd. 1(c)(2), specifically provides, "For a judgment or award over \$50,000, other than a judgment or award for or against the state or a political subdivision of the state, the interest rate shall be ten percent per year until paid." (emphasis added.) This statutory language is clear: a judgment over \$50,000 (that is not for or against the state or a political subdivision) is entitled to accrue interest at a rate of 10% per year. *Id.* The "Effective Date" language of Minn. Stat. § 549.09, subd. 1(c)(2) is equally clear: "This section is effective August 1, 2009, and applies to judgments and awards finally entered on or after that date." 2009 Minn. Laws, ch. 83, art. 2, § 35 (2009).

The Voyager Account Judgment was against Appellants, not the state or a political subdivision, originally totaled \$73,592.00,² and originally was entered on August 20, 2009. (2009 Order on Mots., ¶ 1(b); A-2.) It was plainly and simply a “judgment . . . over \$50,000” that was “entered on or after [August 1, 2009].” See Minn. Stat. § 549.09; Order for J., ¶ 3; ADD-4. Accordingly, the district court properly applied the mandatory 10% interest rate. See Minn. Stat. §549.09, subd. 1(c)(2); Minn. Stat. § 645.44, subd. 16 (“Shall” is mandatory.)

While the district court noted in its 2009 Order on Motions that the Voyager Account Judgment was comprised of three components, each of which was \$50,000 or less, this does not remove the Voyager Account Judgment from the purview of Minn. Stat. § 549.09, subd. 1(c)(2). (2009 Order on Mots., ¶ 1(b); A-2.) As an initial matter, Minn. Stat. § 549.09, subd. 1(c)(2), applies to “judgments,” not “components of judgments.” Accordingly, the composition of the Voyager Account Judgment is wholly irrelevant to the determination of the applicable interest rate under the statute.

Additionally, the ownership of the entire balance of the Voyager Bank account has always been in dispute. At the evidentiary hearing before the district court, Respondents argued that the funds in the Voyager Bank account belonged to the Estate, but it was Appellants’ position that Decedent had gifted all of the funds in the Voyager Bank account to them. (See 2009 Order on Mots., Memo at ¶ C; A-5.) In order to prove the Estate’s ownership of the entire balance of the Voyager Bank account, Respondents

² After adding accrued interest at the statutory rate of 10%, it grew to \$112,051.98 as of December 13, 2011. (2009 Order on Mots., ¶ 1(b); A-2; Order and J., ¶¶ 5-6; A-8.)

had to show that the deposits of Decedent's funds into the account were not intended to be gifts to Respondents. This explains why the transactions involving the Voyager Bank account were examined separately.

The district court (and the Court of Appeals) agreed with Respondents that the Estate was the rightful owner of the Voyager Bank account and specifically found:

There is no credible evidence in the record to support a determination that any of the transactions involving the bank account . . . would place any of those dealings into the gift category. No one considered the asset transfers to be gifts—no gift returns were ever filed nor gift letters exchanged. The only credible evidence which exists points clearly to the fact that all items are rightfully part of the estate.

(Id.) As a result, the district court entered a single “judgment,” the \$73,592.00 Voyager Account Judgment, in favor of the Estate and against Respondents.

Appellants' reliance on Alpine Glass, Inc. v. Am. Family Ins. Co., 2010 WL 5088188 (D. Minn. Dec. 7, 2010),³ to support their argument that the district court erred by applying a 10% interest rate to the Voyager Account Judgment is misplaced. (Appellants' Br., p. 10.) As explained more fully below, Alpine Glass held that a judgment consisting of 2,500 individual, assigned, and subsequently consolidated claims, each of which were less than \$50,000, did not meet the \$50,000 threshold of Minn. Stat. § 549.09, subd. 1(c)(2), and was not entitled to application of a 10% interest rate. The facts, and particularly, the judgment at issue in Alpine Glass could not be more different from the facts and the judgment at issue here. Accordingly, Alpine Glass has no

³ Appellants incorrectly cite Alpine Glass, Inc. as 789 F. Supp. 2d 1148 (D. Minn. 2010). This citation is for the case captioned Gen. Mills Operations, LLC v. Five Star Custom Foods, Ltd., which was decided by the federal district court on May 20, 2011 and is not relevant to the issues in this appeal.

application to this case.

In Alpine Glass, Alpine Glass installed automobile windshields for American Family insurance customers, who claimed that American Family had underpaid their insurance claims. 2010 WL 5088188 at *1; Resps.' App. 68. The customers assigned 2,500 individual legal claims to Alpine Glass, and the federal district court ultimately consolidated those claims into one, single case, which was heard and decided at arbitration. Id. at **1-2. Resps.' App. 68-69. The arbitrator awarded Alpine Glass \$306,960.31 for the 2004-2006 claims and \$423,846.36 for the 2006-2009 claims, in addition to pre-award interest on those amounts at the rate of 10% per year, pursuant to Minn. Stat. § 549.09, subd. 1(c)(2). Id. at **2, 4, Resps.' App. 68-69, 70.

On appeal, the federal district court found that the arbitrator miscalculated the amount of interest to be awarded under Minn. Stat. § 549.09, since the arbitration award consisted of multiple, consolidated claims that were each less than \$50,000. Id. at **3-4, Resps.' App. 69-70. The court reasoned that, Alpine Glass, as the assignee of each of the individual claims, acquired only those rights possessed by each customer. Id. Accordingly, each consolidated claim remained an individual claim in consolidation, and because each individual claim was less than \$50,000, the higher 10% interest rate did not apply. Id.

Unlike Alpine Glass, this case does not involve a lump-sum judgment consisting of multiple, consolidated claims that were each less than \$50,000 and were assigned to the plaintiff by multiple individuals. Instead, this case involves a single judgment consisting of a single claim made by the Estate against Appellants for the entire balance

of the Voyager Bank account, which exceeded \$50,000. The district court did not aggregate multiple claims to cross the \$50,000 threshold value of Minn. Stat. § 549.09, subd. 1(c)(2), as done in Alpine Glass, when it applied the 10% interest rate to the \$73,592.00 Voyager Account Judgment. The fact that the Voyager Account Judgment consists of three separate components does not translate it into three separate, individual judgments and does not exclude it from the 10% interest rate under Minn. Stat. § 549.09, subd. 1(c)(2). Rather, the Voyager Account Judgment is over \$50,000 and is entitled to application of a 10% interest rate under the plain and unambiguous language of Minn. Stat. § 549.09, subd. 1(c)(2). Accordingly, the district court's application of the 10% interest rate to the Voyager Account Judgment should be affirmed.

II. THE DISTRICT COURT PROPERLY EXERCISED ITS DISCRETION WHEN IT REFUSED TO HEAR EVIDENCE REGARDING THE RE-APPRAISAL AND RE-VALUATION OF THE LAKE CABIN.

Without citation to any legal authority in support of their argument, Appellants contend the district court erred in refusing to hear additional argument and receive additional evidence from Appellants regarding the re-appraisal and re-valuation of the lake cabin. This Court reviews the district court's decision to allow or disallow additional evidence for an abuse of discretion. Hamilton v. Killian, 207 N.W.2d 703, 705 (Minn. 1973). There is no evidence to show any abuse of discretion, since Appellants had a full and fair opportunity to establish the value of the lake cabin at the trial in this matter over three years ago. The lake cabin valuation was decided by the district court, affirmed by this Court on Appellants' first appeal, and thus, constitutes the law of the case, which cannot be re-litigated. Additionally, the valuation of the lake cabin was

outside the scope of this Court's remand to the district court after the first appeal. Accordingly, the district court did not abuse its discretion when it refused to hear Appellants' evidence regarding the re-appraisal and re-valuation of the lake cabin.

A. The Lake Cabin Valuation was Fully Explored at Trial and on the First Appeal.

Appellants thoroughly argued and briefed the issue regarding the valuation of the lake cabin at the district court trial in 2009 and the first appeal in 2010, and should not be allowed to re-litigate the valuation issue now. Following the district court trial, Appellants devoted several paragraphs of their Final Argument and Legal Brief dated May 26, 2009 to the alleged "mistakes" in the appraisal considered by the district court. Appellants argued, in relevant part:

. . . The most that has been alleged is that the price, \$185,000, was less than the appraisal of \$285,000. The appraisal, however, was based on a third party sale with no retained rights in the seller. In addition, while the appraisal states that a thorough inspection was made, it makes no mention of water coming through the walls of the basement, or that the fireplace was non-operational, or that the basement wall and floor were covered by mold.

It should be remembered that the appraisal was not done for purposes of acquiring the property but for a home equity loan for the person, Mr. Rutt, who presumably knew the condition of his property.

* * *

The appraisal was significantly higher than the county's assessed value. The appraisal was dated May 4, 2005. At that time the assessed taxable value was \$179,500 and estimated fair market value was \$213,000. In 2006 the taxable value was \$206,400 and the fair market value was \$241,900.

The appraisal itself states that contrary to standard underwriting guidelines a net adjustment of over 15% was made on all the properties. The appraiser thought this adjustment was necessary in order to give a valid opinion.

Without the 15% adjustment, the appraisal value would be approximately \$248,000.

The statement that Mr. Rutt “left \$100,000 on the table” is far from being accurate [citation omitted]. As noted by the appraiser, North Central Minnesota is a difficult area to appraise because of the unique nature of the properties. This is an area where the shoreline property and lake views dominate the value of property. Further, cabins such as this were grandfathered from the current restrictions on cabin placement on lake front property. Also, as the appraiser notes, the market value reflected in the appraisal is contingent upon the buyer and seller being typically motivated, which is not the case here.

(Final Arg. and Legal Br., 8-9 (May 26, 2009); Resps.’ App. 8-9.) The district court fully considered Appellants’ arguments when it valued the lake cabin and decided to establish the \$80,000 account receivable in favor of the Estate and against Appellant David J. Rutt. (See 2009 Order on Mots., ¶ 1(c); A-2.)

On the first appeal in 2010, Appellants specifically challenged the district court’s valuation of the lake cabin, and imposition of the account receivable from Appellant David J. Rutt. In affirming the district court, the Court of Appeals found that Appellant David J. Rutt’s purchase of the lake cabin was “fully explored at trial,” determined that the district court’s decision to deny additional evidence regarding the lake cabin’s value was not an abuse of discretion, and specifically stated:

Appellants argued to the trial court that the home is worth less than the appraised value, citing the lower value assigned by taxing authorities and the difficulty of appraising lake property in northern Minnesota. But we conclude the district court’s valuation finding is not clearly erroneous.

In re Estate of Rutt, No. A09-2336, 14-16; A-23–A-25 (emphasis added).

Upon remand to the district court to amend the final accounting to reflect Respondents’ attorney-fee award from the Estate, rather than from Appellants, Appellants

attempted to re-argue the district court's valuation of the lake cabin and introduce evidence that there were alleged mistakes in the appraisal and the amount of the account receivable owed by Appellant David J. Rutt. The district court refused to hear this evidence since it had previously decided the issue, and its decision was "in [e]ffect affirmed" by the Court of Appeals. (March 31 Order, Memo. at ¶ 3; ADD-3 at ¶ 3.) The following exchange occurred between Appellants' then-counsel and the district court at the February 1, 2011 hearing:

MS. FLEMING: . . . The issue will be the \$80,000.00 that was put on the value of the cabin and that is something that we would like to bring to the judge's attention. We believe a mistake was made on the value of that cabin which affects the \$80,000.00. . . .

THE COURT: Well, I think that horse not only left the barn but has been re-corralled. I'm not going to readdress something that has been decided and passed upon by the Court of Appeals. I don't intend to go backward on this matter, I intend to proceed forward. So, I will not be addressing any claimed mistake on the valuation; again, that is a done deal. That issue is over.

(Tr. of Hr'g, 4:17-5:6; Resps.' App. 53-54.)

On this second appeal, Appellants attempt to argue the exact same valuation issues they previously argued to the district court in 2009 and the Court of Appeals in 2010, and they continue to argue that a "mistake" was made on the valuation of the lake cabin. (Appellants' Br., p. 12.) Appellants' arguments have already been twice dismissed, and the time has long since passed for them to make additional arguments about any alleged mistakes in the appraisal. The valuation issue has already been decided. Thus, the district court's decision to deny additional evidence was not an abuse of discretion. See,

e.g., State v. Farrah, 735 N.W.2d 336, 344 (Minn. 2007) (noting the district court’s discretion under Minn. R. Evid, 403 and 611 to limit or preclude cumulative evidence).

B. The District Court’s Valuation of the Lake Cabin Constitutes the “Law of the Case” and Cannot be Re-Litigated.

The district court properly decided not to hear the additional evidence proposed by Appellants, since it would have violated the “law of the case,” as established by the Court of Appeals in In re Estate of Rutt. In general, the “law of the case” requires that, “when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case.” Kornberg v. Kornberg, 525 N.W.2d 14, 18 (Minn. App. 1994). Once an issue has been decided, it becomes the “law of the case” and may not be re-litigated in the trial court or re-examined in a second appeal. Mattson v. Underwriters at Lloyds, 414 N.W.2d 717, 719-20 (Minn. 1987).

Appellants cannot re-litigate the same issues in subsequent stages of the same case. The lake cabin valuation was decided by the district court in 2009, and the district court’s decision was affirmed by the Court of Appeals in 2010. (See 2009 Order on Mots., ¶ 1(c); A-2; In re Estate of Rutt, No. A09-2336 at 15-16; A-24–A-25.) The “law of the case” regarding the valuation of the lake cabin, as established by In re Estate of Rutt, prevented the district court from allowing Appellants to re-litigate the issue upon remand and precludes re-examination of the issue on this second appeal. Accordingly, the district court did not abuse its discretion when it denied Appellants’ request to submit additional evidence regarding the lake cabin valuation.

C. **A Re-Valuation and Re-Appraisal of the Lake Cabin was Outside the Scope of this Court's Remand to the District Court After the First Appeal.**

A district court's duty on remand is "to execute the mandate of [the remanding court] strictly according to its terms." Halverson v. Village of Deerwood, 322 N.W.2d 761, 766 (Minn. 1982). The Court of Appeals affirmed the district court in all respects, with the exception of the attorneys' fee issue. On that issue, the Court of Appeals stated, "[W]e reverse the attorney-fee judgment against [A]ppellants and remand for further proceedings, which may include amendment of the final accounting to reflect the attorney-fee award." In re Estate of Rutt, No. A09-2336 at 16; A-25. The valuation of the lake cabin had nothing to do with the attorney-fee award and was outside the scope of the remand. Therefore, the district court's refusal to hear additional evidence on remand was not an abuse its discretion.

III. THE DISTRICT COURT PROPERLY EXERCISED ITS DISCRETION WHEN IT REFUSED TO HEAR ADDITIONAL EVIDENCE REGARDING THE DISTRIBUTION OF THE ESTATE'S PERSONAL PROPERTY.

Again, without any citation to supporting legal authority, Appellants argue that, upon remand, the district court erred by refusing to hear additional evidence regarding the distribution of the Estate's personal property. As previously stated, this Court reviews the district court's decision to allow or disallow additional evidence for an abuse of discretion. Hamilton, 207 N.W.2d at 705. Appellants' appeal of this issue should fail because it is untimely, and even if it is not deemed to be untimely, the "law of the case" prevented the district court from re-litigating this issue. Thus, the district court's decision

to deny additional evidence regarding the distribution of the Estate's personal property was not an abuse of discretion.

A. Appellants' Appeal of the Distribution of the Estate's Personal Property is Time-Barred.

Appellants attempt to appeal an issue that they were required to appeal over two years ago. While Appellants claim that their appeal regarding the district court's distribution of the Estate's personal property stems from the March 31 Order, which was reduced to judgment against Appellant David J. Rutt and Appellant Peter F. Rutt via the December 21 Judgment, a plain reading of the March 31 Order shows that the district court decided the personal property issue over two years earlier.

Appellants acknowledge that the distribution of the Estate's personal property was subject to a bidding process among Appellants and Respondents. (Appellants' Br., 15.) Appellants and Respondents both participated in the bidding process, had the opportunity to bid on the Estate's personal property, and the Estate's personal property was ultimately awarded to the highest bidder. Appellants were each awarded items of the Estate's personal property based on their winning bids: Appellant David J. Rutt bid a total of \$10,940.15, and Appellant Peter F. Rutt bid a total of \$6,031.13 for specific personal property items. While Appellants apparently wanted to purchase the Estate's personal property items back in 2009, they no longer do. Instead, they want to sell the Estate's personal property items at auction.

In response to Appellants' argument that the personal property should be sold at auction, rather than distributed according to the bids made by Appellants and

Respondents, the district court stated in its March 31 Order, “there is no order which mandates the sale of property, just in exchange as ordered earlier.” (March 31 Order, Memo. at ¶ 1; ADD-2.) The district court was referring to the 2009 Order on Motions, which specifically stated, “That the list of personal property evidencing its distribution among the parties, designated as Exhibit 1 herein shall control the distribution and ownership of those items.” (2009 Order on Mots, ¶ 3; A-2.) The 2009 Order on Motions was reduced to judgment via the October 27, 2009 Order and Judgment, which provided,

That it is hereby decreed that judgment(s) as against David J. Rutt and/or Peter F. Rutt consistent with the Final Account and Order of Distribution as well as with this and the prior orders in this proceeding are hereby entered immediately, and as such shall be liens against them individually and their property as allowed by law.

(Order and J., ¶ 5; Resps.’ App. 47.) Additionally, the October 27, 2009 Judgment provided, “The above Order together with the prior Orders issued herein constitute a final judgment.” (Id. at p. 3; Resps.’ App. 48.)

Had Appellants wanted to appeal the district court’s decision to distribute the Estate’s personal property according to the bids made by Appellants and Respondents, the time to do so was over two years ago, within 60 days of the October 27, 2009 Order and Judgment. Minn. R. Civ. App. P. 104.01 provides, “Unless a different time is provided by statute, an appeal may be taken from a judgment within 60 days after its entry[.]” While Appellants managed to appeal several other issues decided by the October 27, 2009 Order and Judgment on the first appeal in this case, they failed to appeal the issue regarding the distribution of the Estate’s personal property. Because Appellants failed to appeal the district court’s distribution of the Estate’s personal

property by Monday, December 28, 2009,⁴ or 60 days after October 27, 2009, their appeal of this issue is now time-barred pursuant to Minn. R. Civ. App. P. 104.01, subd. 1.

B. The District Court's Distribution of the Estate's Personal Property is the "Law of the Case" and Cannot be Re-Litigated.

Because the district court ordered the distribution of the Estate's personal property in its 2009 Order on Motions and October 27, 2009 Order and Judgment, and because Appellants did not challenge or previously appeal those specific orders and judgment, it became the "law of the case" upon the expiration of the appeal period. Since the "law of the case" governs the same issues in subsequent stages of the same case, it was a proper exercise of the district court's discretion to not allow Appellants to re-litigate the issue involving the distribution of the Estate's personal property. See Kornberg, 525 N.W.2d at 18; Mattson, 414 N.W.2d at 719-20.

CONCLUSION

Appellants' appeal should be denied in its entirety, since the district court properly calculated interest on the Voyager Account Judgment and the Lake Cabin Judgment and properly exercised its discretion by refusing to hear additional evidence regarding the re-appraisal and re-valuation of the lake cabin and the distribution of the Estate's personal property. The plain and unambiguous language of Minn. Stat. § 549.09 required application of a 10% interest rate calculated from the commencement of Decedent's probate estate on the \$73,592.00 Voyager Account Judgment and the \$80,000.00 Lake

⁴ Sixty days after October 27, 2009 was actually Saturday, December 26, 2009, but pursuant to Minn. R. Civ. P. 6.01, "The last day of the period so computed shall be included, unless it is a Saturday, [or] a Sunday[.]" Accordingly, Appellants' deadline to appeal the October 27, 2009 Order and Judgment was Monday, December 28, 2009.

Cabin Judgment. The appraisal and valuation of the lake cabin and the amount of the account receivable owed to the Estate by Appellant David J. Rutt had already been fully explored at trial and on the first appeal, constituted the “law of the case” that could not be re-litigated, and were outside the Court of Appeals’ remand. Finally, Appellants’ appeal regarding the distribution of the Estate’s personal property is untimely, and if not untimely, it had already been established as the “law of the case” that could not be re-litigated. Accordingly, the district court’s March 31 Order and December 21 Judgment should be affirmed.

Respectfully submitted,

Dated: June 11, 2012

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NO. A12-335

STATE OF MINNESOTA
IN COURT OF APPEALS

IN RE THE ESTATE OF:
JOHN KENNETH RUTT, a/k/a JOHN K. RUTT
and JOHN RUTT, DECEASED

CERTIFICATION OF BRIEF LENGTH

I hereby certify that this Brief conforms to the word count/line count limitations and typeface requirements of Minn. R. Civ. App. P. 132.01, subds. 1 and 3, for a Brief produced with a proportionate font. The length of the Brief is 7,586 words. This Brief was prepared using Microsoft® Word 2000.

Dated: June 11, 2012

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