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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-147**

In re: The Estate of James L. Peka,
In re: The Conservatorship of April Marie Peka,
In re: The Matter of the Trust Created by the Last Will and Testament of:
James L. Peka Dated May 11, 2004

**Filed February 12, 2008
Affirmed
Ross, Judge**

Sherburne County District Court
File Nos. P6-05-3009, P7-05-2449, C2-05-2312

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Considered and decided by Dietzen, Presiding Judge; Lansing, Judge; and Ross,
Judge.

UNPUBLISHED OPINION

ROSS, Judge

This appeal involves the district court's construction of a will that expressly
forbids appellant Debra Peka and her mother from ever residing in testator James Peka's
home. The will left all of James Peka's property in trust for his and Debra Peka's

daughter. Debra Peka, whose marriage to James Peka ended before his death, twice tried to purchase the home, once personally and once in her capacity as her daughter's conservator. She also tried to compel her daughter's trust to begin making child-support payments due from the estate. The district court prohibited both attempted home purchases and refused to compel the trust to make child-support payments. The district court also disqualified the conservatorship's attorney because it found a conflict of interest between the conservatorship's attorney and Debra Peka's personal attorney, who are partners in the same law firm. Because the will bars the sale of the home to Debra Peka, and because James Peka's social-security benefits cover his estate's child-support obligation, we affirm the district court's judgment regarding the financial dispute. We also affirm the district court's conflict-based disqualification of the conservatorship's attorney.

FACTS

Testator James Peka and appellant Debra Peka were married and had a daughter, A.P., in 1994. Their marriage dissolved four years later by a dissolution decree that required James Peka to pay child support in the amount of \$119.50 weekly. The decree required him to maintain life insurance for additional support for A.P. on his death. He executed his will in 2004, leaving his entire estate in trust to A.P., with James Peka's sister, Catherine Wersal, to serve as trustee. James Peka died September 4, 2005. At the time of his death, he had been paying \$632 in monthly child support. James Peka's estate includes the following: two IRAs, worth approximately \$11,000 total; his former employer's profit-sharing plan; a \$10,000 life-insurance policy naming A.P. as the

insured; and a homestead, valued “as is” at \$174,000. James Peka held a \$46,000 life insurance policy payable on his death to A.P. in trust. Debra Peka is A.P.’s conservator.

The will directs Wersal to use the trust for A.P.’s college or vocational education. When A.P. turns 25 years old, the trust will begin paying A.P. ten percent of the remainder of the corpus each year until depleted. The will expressly provides, “[M]y former wife or her mother shall never live in my home.” The will also notes that Social Security should be more than sufficient to cover the child-support obligation. That projection is accurate; Debra Peka receives social-security payments totaling approximately \$1,800 per month, almost three times the amount James Peka paid as child support.

In August 2006 Debra Peka tried to buy the homestead and its personal property for \$150,000. The real estate alone had an estimated fair market value of \$174,000. The purchase agreement included personal property valued by Wersal at \$6,000 to \$10,000. The purchase agreement also required the estate to pay the cost to bring the home up to code, approximately \$7,000.

James Peka’s relatives objected to the sale. In their view, he would have wanted A.P. to get the highest possible value from the estate. But if the market value estimates accurately reflect the value of the real and personal property, Debra Peka would receive a windfall of up to approximately \$62,000 based on her August 2006 proposed purchase agreement. The relatives also noted that selling the house to her would defeat James Peka’s intent to bar Debra Peka from ever living in his house. The district court agreed

and refused to approve the purchase agreement, and it ordered the estate representative not sell or rent the house without court approval.

In September 2006 Debra Peka again tried to purchase the homestead, this time as A.P.'s conservator. In the second purchase agreement, Debra Peka as conservator offered to pay \$174,000. This agreement did not require the estate to bring the house to code, but it did include conveyance of the personal property. The estate representative refused the offer, explaining that it was incompatible with the will's terms.

Debra Peka then unsuccessfully sought relief in district court. She requested that the court approve the first or the second purchase agreement and also requested that the court order Wersal to apply the trust funds to pay child support. The district court refused to approve the sale because it found the sale would frustrate James Peka's intent as stated in the will that Debra Peka never live in the house. The court also denied the motion to compel the trust to fund the child-support obligations. It reasoned that the life insurance proceeds that fund the trust belong to A.P., not to the estate, and therefore they could not be used to pay the estate's obligations.

Wersal moved the district court to disqualify one of Debra Peka's attorneys from representing both her and the conservatorship. Both attorneys were partners at the same firm, one representing Debra Peka in her personal capacity, and the other representing the conservatorship. The district court granted this motion, reasoning that there was a significant risk that dual representation might limit the attorneys' effectiveness in representing the interests of both clients.

Debra Peka appeals, challenging the district court's denial of her request to buy the homestead, its denial of her motion to compel A.P.'s trust to make child-support payments to her, and its order that the conservatorship find new counsel.

DECISION

I

We first address Debra Peka's challenge to the district court's construction of James Peka's will as expressing his intent to prevent Debra Peka from buying the homestead. Where there are no disputed material facts, we review a district court's construction of an unambiguous will de novo. *In re Estate and Trust of Anderson*, 654 N.W.2d 682, 687 (Minn. App. 2002). Our primary concern in construing a will is to ascertain the decedent's intent. *In re Wyman*, 308 N.W.2d 311, 315 (Minn. 1981). And we gather intent from the language of the will itself. *In re Shields*, 552 N.W.2d 581, 582 (Minn. App. 1996), *review denied* (Minn. Oct. 29, 1996). "The cardinal rule in the construction of wills, to which all others must bend, is that the intention of the testator expressed in the instrument shall prevail." *In re Woodward's Estate*, 84 Minn. 161, 165, 86 N.W. 1004, 1006 (1901).

The disputed provision of James Peka's will reads, "It is my express intention that my former wife or her mother shall never reside in my home." The district court interpreted this language to mean that the homestead "may [not] be acquired or in any way made use of" by Debra Peka or her mother. Debra Peka does not argue that James Peka intended to allow her to purchase the home. Rather, she insists that the literal language of the provision does not preclude her purchase. She contends that once she

purchases the homestead, it would then actually become *her* home, and no longer *his* home, and so her purchase would not contravene the will's statement that she "shall never reside in *my* home." The most charitable description of the argument is that it is devoid of any merit. The district court's interpretation correctly embodies the testator's obvious intent based on the plain language of the will.

Debra Peka alternatively contends that the provision preventing her from living in the house is against public policy and therefore void. A testator's intent should govern "unless he has attempted to make a disposition of his property contrary to law or public policy." *In re Schmidt's Will*, 256 Minn. 64, 89, 97 N.W.2d 441, 458 (1959). Debra Peka argues that the restraint alienates A.P.'s right to use the homestead, which she owns, and that it encourages that she be separated from A.P., her daughter.

Debra Peka rests this argument on the reasoning of *In re Appleby's Estate*. 100 Minn. 408, 111 N.W. 305 (1907). We are not persuaded. That case upheld an antenuptial contract directing annuity payments to a widowed husband for so long as he remained unmarried. *Id.* at 415–17, 433, 111 N.W. at 306–07, 313. The court held that the contract "did not tend to restrain marriage within the meaning of the law," it merely provided for the widower until he chose to remarry. *Id.* at 421, 111 N.W. at 308. The pressure toward family separation here is even less weighty than the alleged marriage restriction encouraged by the annuity in *Appleby's Estate*. Debra Peka was not living in the home with the child at the time of James Peka's death and James Peka's will contemplated the sale of the home to someone other than Debra Peka despite the fact that

the child would live with her mother. The alleged incentive for separation of Debra Peka and A.P. neither requires nor induces separation.

Debra Peka also cites *Morse v. Blood* in support. 68 Minn. 442, 71 N.W. 682 (1897). *Morse* does not aid the argument. In *Morse*, a husband left his wife an estate on the condition that she not give “one cent” of the estate to any member of his family or her family. *Id.* at 442, 71 N.W.2d at 682. The estate included a fee simple in the homestead. *Id.* The court struck down the restriction on the principle that conditions that subject fee simple titles to forfeiture are “odious to the law, and against public policy.” *Id.* at 443–44, 71 N.W. at 683. The court reasoned that if the wife died intestate, the property would pass to her heirs, but by the terms of the will, if she failed to meet the condition, the property would pass to his heirs. *Id.* at 444, 71 N.W.2d at 683. These were the only two classes that the husband did *not* want to have the property. The devise therefore created an absurd forfeiture outcome. Noting the direct conflict between the testator’s intent and the law, the court struck down the restriction. *Id.* Unlike the concern in *Morse*, here, there are no forfeiture provisions relating to the testator’s homestead.

Debra Peka finally argues that preventing the house from being sold to her alienates A.P.’s unfettered right to use the house. The argument fails because A.P. does not have unfettered rights to the property. Instead, it is to be held in trust to fund her education or be disbursed once she reaches age 25. *See, e.g., Morrison v. Doyle*, 582 N.W.2d 237, 240–41 (Minn. 1998) (noting that a spendthrift trust restricts a beneficiary’s control of the corpus for the beneficiary’s long-term interest and is a valid restraint on alienation, and noting that restriction for educational expenses are common in spendthrift

trusts). James Peka contemplated and intended this limitation on A.P.'s use of the devised property. The restriction does not interfere with James Peka's objective to preserve the home's value for A.P.'s future educational expenses or later noneducational use.

II

Debra Peka contests the district court's conclusion that it could not order that the life-insurance proceeds be used to pay James Peka's child-support obligations. The district court's conclusion rests on the fact that the life insurance proceeds were not assets of the estate because they belong to A.P. and were never part of James Peka's assets. We need not review this determination because "a child's receipt of social-security survivor's benefits should be credited against any duty imposed on the obligor's estate." *Berg v. D.D.M.*, 603 N.W.2d 361, 366 (Minn. App. 1999), *review denied* (Minn. March 14, 2000). After James Peka's death, the Social Security Administration began paying approximately \$1,800 per month to Debra Peka for the benefit of the child. This is almost three times the amount of his child-support obligation. Debra Peka's position therefore lacks legal or practical force. What is more troubling is that by litigating to require the trust to make the \$46,000 in life-insurance proceeds available to satisfy child-support payments that had already been abundantly covered by the social-security benefits, according to counsel at oral argument, the trust fund that James Peka established to provide for his daughter's education and for her later use has been substantially or completely depleted for no apparent possible additional benefit to the child.

III

Debra Peka challenges the district court's ethics-based decision to require her to obtain separate counsel to represent her individually and to represent the conservatorship that she serves as the conservator. This court reviews de novo a district court's interpretation of the Rules of Professional Conduct. *In re Trust Created by Hill*, 499 N.W.2d 475, 491 (Minn. App. 1993), *review denied* (Minn. July 15, 1993). A law firm may not represent two clients with directly adverse interests. *See* Minn. Rule Prof. Conduct 1.7(a)(1), 1.10(a). A law firm also is barred from representing two clients if its responsibilities "will be materially limited by [the firm's] responsibilities to another client, a former client or a third person." Minn. Rule Prof. Conduct 1.7(a)(2); *see also id.* R. 1.10(a). At the district court, Debra Peka was represented both by Rhonda Magnussen and Ronald Black, law partners in the same firm. Black alone also represented the conservatorship. Wersal objected on conflict-of-interest grounds. The district court applied rules 1.7(a) and 1.10(a) of the Minnesota Rules of Professional Conduct and ordered Debra Peka to hire different counsel to represent the conservatorship.

Debra Peka argues that her attorneys do not have a conflict under rule 1.7(a) because they represent only her. She is mistaken. A conservatorship, like a corporation, estate, or trust, is a separate and distinct legal entity from the person who is its agent. *See Cary & Co. v. F.E. Satterlee & Co.*, 166 Minn. 507, 509, 208 N.W. 408, 409 (1926) (holding that a corporation is a separate and distinct legal entity even if it has only one owner); *cf. In re Gershcov's Will*, 261 N.W.2d 335, 340 (Minn. 1977) (noting that a trust and an estate are separate legal entities even where assets of the estate became the assets

of the trust). As conservator for the conservatorship established to protect A.P.'s interest, Debra Peka is in a position to direct both her legal counsel and the separate conservatorship's legal counsel.

Debra Peka's and the conservatorship's interests conflict on at least two issues, the sale of the home and the payment of child support from A.P.'s trust. The conservatorship is charged with acting in the child's best interests. A conservator has the power to provide for the needs and best interests of a conservatee. *See In re Conservatorship of Torres*, 357 N.W.2d 332, 337–38 (Minn. 1984) (holding that a court may empower a conservator to withdraw life support “if the conservatee’s best interests are no longer served by the maintenance of life supports”); *see also* Minn. Stat. § 524.5–417(b) (2006) (“The court shall grant to a conservator only those powers necessary to provide for the demonstrated needs of the protected person.”). Debra Peka has already effectively asked the court to order child support from A.P.'s future college fund even though social-security benefits now far exceed previous child-support receipts. Regarding the sale of the house, she has negotiated for a price below market value. Even if her contention is true that hers represents the best offer the estate would receive for the house, A.P., as owner of the house in trust, is the seller and would benefit by a higher price. That Debra Peka may not buy the house because of the will's prohibition does not erase the conflict. As noted in the previous section, counsel opined during oral argument that litigation in this matter has essentially depleted the trust of its assets. Debra Peka's counsel indicated that with the exception of the house's value, the trust is essentially empty. Because Magnussen and Black represented parties with adverse interests and were members of the

same law firm, we affirm the district court's order requiring Debra Peka to secure different legal counsel for the conservatorship.

Affirmed.