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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2293**

In the Matter of the Estate of:
Michael J. Leslie,
a/k/a Michael James Leslie,
Deceased.

**Filed September 14, 2010
Affirmed
Lansing, Judge**

Washington County District Court
File No. 82-PR-08-5628

R. Gordon Nesvig, Cottage Grove, Minnesota (for appellant)

Richard F. Carlson, Jr., Maplewood, Minnesota (for respondent)

Considered and decided by Stauber, Presiding Judge; Lansing, Judge; and Johnson, Judge.

UNPUBLISHED OPINION

LANSING, Judge

In this appeal from an order in a probate proceeding, the personal representative challenges the district court's determination that a cohabitation contract between the decedent, Michael Leslie, and Sandra Weidt is valid and enforceable against Leslie's estate. Because the contract is valid and because the district court acted within its discretion by determining that the claim is not time-barred, we affirm.

F A C T S

The facts relevant to this appeal relate to Michael Leslie's (Leslie) probate proceedings and a November 5, 2001 cohabitation contract between Leslie and Sandra Weidt. Leslie died on July 9, 2008. From January 1999 until Leslie's death, he and Weidt lived together as domestic partners in a house in Newport that was titled solely in Leslie's name.

The November 5, 2001 agreement between Leslie and Weidt was captioned, "Cohabitation Contract." It was signed by both Leslie and Weidt and notarized. The two-page contract acknowledged that it was intended to satisfy statutory provisions governing cohabitation between unmarried persons and to protect the respective rights of Leslie and Weidt. The contract specifically acknowledged that Weidt had "invested sums of money and personal labor into the improvement" of the Newport house and it provided for alternative dispositions of the value of that investment through a payment, an option to purchase with a reduction in price, or a lien.

In July 2003, two years after executing the cohabitation agreement, Leslie executed a will. The will nominated Leslie's son, Broc Leslie, and Weidt as personal representatives, with the joint power to nominate additional or successor personal representatives. The will included specific devises of personal items to Broc Leslie and household goods to Weidt. Broc Leslie or his estate were listed as the residuary beneficiaries of Leslie's personal property. And the devise of real property provided: "I devise any interest I may have in my homestead, and any other real property, to my son," Broc Leslie.

The disposition alternative for Weidt's investment in the Newport house that became operative under the cohabitation contract when Leslie predeceased Weidt provided Weidt with a first option to purchase the house at the stated sum of \$95,000. This amount was based on their stipulation that the house was worth \$105,000 at the time they signed the cohabitation contract and that Weidt's investment of money and labor amounted to \$10,000. Under the contract Weidt was entitled to \$10,000 if Leslie terminated their relationship and, if Weidt did not exercise her option to purchase the house when Leslie died, she "retain[ed] a specific lien of \$10,000 from the proceeds of the sale of the property."

On August 13, following Leslie's July 9 death, Broc Leslie applied to become the personal representative of his father's estate. Despite Broc Leslie's knowledge of his father's July 2003 will, he petitioned for an intestate proceeding. Weidt served Leslie's estate with a Written Statement of Claim on September 3, 2008, seeking to enforce the cohabitation agreement. Broc Leslie, acting as the personal representative, disallowed the claim. Weidt responded by petitioning to have Leslie removed as personal representative, citing his refusal to honor the cohabitation agreement and his failure to disclose the existence of Leslie's will.

In a January 16, 2009 order, the district court required Broc Leslie and his attorney to enter the July 2003 will into the probate proceeding and to take all necessary steps to determine the validity or invalidity of the will. The district court denied the petition to remove Broc Leslie as the personal representative but ordered that Leslie's estate

administration proceed as a supervised administration and restricted Broc Leslie from selling or encumbering the Newport house without prior court approval.

Following an evidentiary hearing, the district court determined on May 18, 2009, that Leslie's July 2003 will was valid and entered it into probate. The district court also confirmed the scheduling of a hearing on the validity of Weidt's claim based on the cohabitation agreement. At the close of the hearing on Weidt's claim, the district court allowed the proceeding to go forward as an informal probate proceeding but protected Weidt's claim against the Newport house by continuing its previous order restraining Leslie from selling or encumbering the house without prior court approval. After receiving the attorneys' final submissions on the validity of the cohabitation contract, the district court found that the contract was valid, was not time-barred, and was enforceable against Leslie's estate. Broc Leslie, individually and as personal representative of his father's estate, appeals.

D E C I S I O N

I

This appeal raises issues related to the enforceability of a cohabitation contract in the context of a probate proceeding. A probate court has the power "to take all . . . action necessary and proper to administer justice in the matters that come before it." Minn. Stat. § 524.1-302(b) (2008). In Minnesota, a court has jurisdiction to enforce a cohabitation agreement that governs the property and finances of cohabiting persons if the agreement satisfies statutory requirements. Minn. Stat. § 513.076 (2008). The two statutory

requirements are that “the contract is written and signed by the parties” and “enforcement is sought after termination of the relationship.” Minn. Stat. § 513.075 (2008).

Broc Leslie asserts multiple challenges to the validity of Leslie’s and Weidt’s cohabitation contract. Five challenges are sufficiently developed to allow a basis for analysis. These five are: the contract is invalid for failure to meet the statutory requirements of sections 513.075 and .076; the contract is void for lack of consideration; the purchase-option of the contract is invalid because it fails to satisfy the statute of frauds; the contract is unenforceable because it was not executed with the formalities required for a will; and the contract is unenforceable because it violates Minn. Stat. § 524.2-402 (2008), the statutory homestead exemption.

The first challenge—advanced under sections 513.075 and .076—is that the cohabitation agreement is invalid because it was written and signed more than two years after Leslie and Weidt began cohabiting, not before the time of cohabitation. As a basis for this argument, Broc Leslie relies on an unpublished case from this court and on the introductory language in section 513.075 that precedes the two requirements for a valid cohabitation contract. The introductory clause begins by saying “[i]f sexual relations between the parties are contemplated.” *Id.* He reads this language to add a third requirement: that the parties must form their agreement before they begin cohabitation. This reading of section 513.075 appears to be overly restrictive. Section 513.075 expressly refers to cohabitation contracts “between a man and a woman who are living together . . . or who are about to commence living together.” *Id.* Similarly, section 513.076 refers to a “claim [that] is based on the fact that the individuals lived together in

contemplation of sexual relations.” These textual references suggest that the requirements apply to both new and ongoing cohabitation. It is undisputed that Weidt’s and Leslie’s cohabitation contract meets the two stated requirements of section 513.075, that the contract is written and signed by the parties and that enforcement is sought after termination of the relationship.

But even if the prefatory language required an executed contract before cohabitation, that requirement would not affect the validity of Leslie’s and Weidt’s cohabitation contract because the contract is based on consideration that is not limited to cohabitation. The statutory limitations on cohabitation agreements apply only when the sole consideration for an agreement’s terms is the contemplation of sexual relations outside of wedlock. *In re Estate of Eriksen*, 337 N.W.2d 671, 674 (Minn. 1983). The district court specifically found, consistent with the stipulations in the contract and based on testimony at the hearing, that Weidt, had “invested sums of money and personal labor into the improvement” of the Newport house and that this investment provided independent consideration. The district court’s finding is supported by the record and is not disputed on appeal. Leslie and Weidt’s cohabitation agreement is not invalid for failure to satisfy the requirements of Minn. Stat. § 513.075 or Minn. Stat. § 513.076.

The second challenge to the validity of the cohabitation contract is that it is void for lack of consideration. *See Franklin v. Carpenter*, 309 Minn. 419, 423, 244 N.W.2d 492, 495 (1976) (stating that “[w]hen there is a lack of consideration, no valid contract is ever formed”). This argument fails for lack of factual support. Although captioned “Cohabitation Contract,” the district court found that Weidt provided independent

consideration through substantial monetary contributions and by assisting in the remodeling and maintenance of the home. The district court noted that the cohabitation contract specifically recognized the contribution of money and personal labor. And the district court further noted that Weidt had jointly shared in maintenance costs and labor while she and Leslie lived in the house. In return for her contributions of money and labor to the improvement of the house, Weidt received a right to recoup her contribution through a payment, an option to purchase with a reduction in price, or a lien.

The third challenge is that the cohabitation contract's provision that allows Weidt to purchase the Newport house for \$105,000 is essentially an option agreement that is invalid because it fails to satisfy the statute of frauds. For this argument, Broc Leslie relies on the option requirements stated in *Malevich v. Hakola*, 278 N.W.2d. 541, 543 (Minn. 1979). But neither the facts nor the law warrant this reliance. Even if the cohabitation contract could be characterized as an option agreement, the requirements are satisfied. It is undisputed that the agreement is in writing and signed by Leslie and Weidt, that it states the consideration, and that it states the conditions of the sale. The agreement adequately identifies the property as the Newport house shared by Weidt and Leslie and states the address of the property. The extent of the property has not been disputed in these proceedings. Additionally, the seller under the option is identified in the agreement by the provision that Weidt must exercise the option by submitting the agreement "to the personal representative and/or the attorney representing [Michael Leslie's] estate." The agreement specifically binds Leslie's heirs and is signed by Leslie

on their behalf. Under *Malevich*, the cohabitation agreement is a valid option contract for the sale of Leslie's home.

The fourth challenge is that the cohabitation contract is unenforceable because it was not executed with the formalities required for a will. The district court did not explicitly address this argument in its order, but stated that it found "no basis to declare the contract invalid." Broc Leslie has not provided any legal support for his argument that the agreement required the formalities of a will, and we agree with the district court that this argument does not support a claim of invalidity.

At common law, a document creating an interest that vested at the time of the document's execution was not testamentary, even if the benefit to be received was postponed until the death of the grantor. *See Thomas v. Singer Sewing Mach. Co.*, 105 Minn. 88, 90, 117 N.W. 155, 156 (1908) (discussing whether instrument was will or deed and stating that test is grantor's intention to convey "present right or interest, absolute or contingent, in the subject-matter of the grant"); *see also Innes v. Potter*, 130 Minn. 320, 323-25, 153 N.W. 604, 605-07 (1915) (applying rule in *Thomas* to irrevocable gift of personal property). The contract that established Weidt's right to recoup the money and labor that she contributed to the value of the Newport house also included alternative methods of recoupment. Although the methods of recoupment were contingent on future circumstances, Weidt's interest vested at the execution of the agreement. The agreement was therefore not testamentary and did not require the formalities of a will.

The fifth and final challenge is that the cohabitation contract violates the statutory homestead exemption, set forth in Minn. Stat. § 524.2-402(c) (2008). This argument

necessarily rests on the assertion that the option to purchase the homestead constitutes a “debt” under the statute. Even if it is a “debt,” however, Weidt’s option to purchase was valid at the time of Leslie’s death, and the homestead remained subject to that obligation. Minnesota probate law follows the general rule that a person can devise by will no greater interest in property than that person possesses. *In re Estate of Van Den Boom*, 590 N.W.2d 350, 353 (Minn. App. 1999) (applying this principle to probate proceedings), *review denied* (Minn. May 1999). Having granted Weidt the option to purchase the home, Leslie’s interest in the Newport home that passed “by descent or will” to Broc Leslie was an interest subject to Weidt’s purchase option.

None of Broc Leslie’s five challenges provides a basis to invalidate Leslie’s and Weidt’s contract or the claim that Weidt has asserted against the Newport house in the probate proceedings. The district court made sufficient findings and properly applied the law by enforcing the agreement and requiring the estate to honor Weidt’s option to purchase the home.

II

In addition to Broc Leslie’s challenges to the validity of the cohabitation contract, he also raises the procedural challenge that any claim by Weidt against the estate is time-barred. A claimant must file a petition for allowance with the court or commence a proceeding against the personal representative within two months, if a personal representative disallows a claim in whole or in part and also notifies the claimant of the two-month limitation period. Minn. Stat. § 524.3-806 (2008). Notwithstanding this requirement, it is within the sound discretion of the probate court to reopen an estate and

allow the filing of a late claim to avoid injustice. Minn. Stat. § 524.3-804(3) (2008). “This discretion should be exercised liberally in favor of the allowance of claims which are prima facie valid.” *In re Estate of Hoppke*, 388 N.W.2d 754, 756 (Minn. App. 1986) (citations omitted). When a court’s decision is founded on equitable considerations, we review for abuse of discretion. *Krmpotich v. City of Duluth*, 483 N.W.2d 55, 57 (Minn. 1992).

It is undisputed that Broc Leslie denied the claim Weidt filed seeking the enforcement of the cohabitation agreement, that he notified Weidt of the two-month limitation period, and that Weidt did not, within two months, either file a petition for allowance in the court or commence a proceeding against him. But Weidt’s claim arose from a valid agreement between Weidt and Michael Leslie. Weidt’s claim was therefore valid on its face. Furthermore, the record supports the district court’s finding that Broc Leslie’s actions prevented Weidt from following the procedures that should have applied in the probate action. Consequently, the district court concluded that Broc Leslie acted with “unclean hands.” The district court determined that the will was valid and that Broc Leslie knew about the will when he attempted to proceed intestate. Although the district court did not remove Broc Leslie as personal representative, it did conclude that it would be “inequitable to require [Weidt] to meet the requirements of a statute [governing] the filing of claims when the entire intestate proceeding was improper in the first place.” We conclude that the district court did not abuse its discretion in waiving the two-month limitation period.

Broc Leslie cites *In re Estate of Gerhardt*, 369 N.W.2d 335 (Minn. App. 1985) and *In re Estate of Molden*, 396 N.W.2d 624 (Minn. App. 1985), to support his argument that the two-month limitation period should be strictly applied. But neither case involved equitable considerations in favor of waiving the limitation period. In both cases, counties were held to the same standards as other creditors when they attempted to file claims against estates. In *Gerhardt*, we held only that a county must be treated as any other creditor in filing a claim against the estate. 369 N.W.2d at 337. And in *Molden*, we specifically stated that the county was not diligent in pursuing its claim against the estate. 396 N.W.2d at 626-27.

Weidt acted diligently by immediately petitioning for Broc Leslie's removal as personal representative. Therefore, neither case supports Broc Leslie's argument. The district court properly exercised its discretion, and Weidt's claim against the Newport house based on the cohabitation contract is not time-barred.

Affirmed.