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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1897**

In re the Estate of: Delphine L. Goossen, Deceased

**Filed June 25, 2012
Affirmed
Stoneburner, Judge**

Watonwan County District Court
File No. 83-PR-10-187

Daniel A. Birkholz, Birkholz Law, LLC, St. James, Minnesota (for appellant)

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Considered and decided by Chief Judge Johnson, Presiding Judge; Stoneburner, Judge; and Bjorkman, Judge.

UNPUBLISHED OPINION

STONEBURNER, Judge

Appellant challenges the probate court's determinations that (1) he converted assets of his mother's estate, entitling the estate to recover double damages under Minn. Stat. § 525.392 (2010) and (2) his claims against the estate were untimely. Because the record supports the determinations, we affirm.

FACTS

Delphine Goossen (mother) was a widow when she died intestate on September 17, 2009. She is survived by three children: appellant Jonathan Goossen, Elizabeth

Goossen, and Cynthia Goossen. After her husband's death, mother had a good relationship with her son, but she was estranged from her daughters. During her life she added Jonathan Goossen's name to most of her bank accounts, which automatically became his property when she died. The primary assets of mother's estate consisted of a home and its contents in St. James, an automobile, and a manufactured home and its contents in Mesa, Arizona (Arizona home). Based on mother's estrangement from her daughters and conversations Jonathan Goossen claims to have had with mother, Jonathan Goossen concluded, without consulting an attorney or his sisters, that all of mother's assets passed directly to him.

In November 2009, Jonathan Goossen found the Certificate of Title to the Arizona home. The title was in the names of both parents. Jonathan Goossen travelled to Arizona and executed a "Non-Probate Affidavit for Obtaining Title to the Vehicle of an Arizona Decedent" (Non-Probate Affidavit) for each of his deceased parents. In the Non-Probate Affidavit for mother, Jonathan Goossen asserted, in relevant part:

2. The value of all the personal property in the decedent's estate, wherever located, less liens and encumbrances, does not exceed \$50,000.00.

3. Affiant is the successor of the decedent, entitled to decedent's property by will or intestate succession.

4. An application or petition for the appointment of a personal representative is not pending or has not been granted in any jurisdiction, or, if granted, the personal representative has been discharged or more than one year has elapsed since a closing statement has been filed

. . . .

6. The affiant is entitled to receive payment of any debt due the decedent, and to receive the decedent's tangible personal property or an instrument evidencing the transfer to the affiant of any debt

Jonathan Goossen signed this Non-Probate Affidavit on November 25, 2009, and immediately registered the Arizona home and transferred title to his name. On December 10, 2009, he sold the Arizona home and its contents for \$15,000. The sale was completed without an inventory or appraisal of the property.

On March 26, 2010, attorneys for the estate of mother mailed to Jonathan Goossen, among others, a notice of the hearing on a Petition for Formal Adjudication of Intestacy to appoint Beverly Falk as the personal representative for mother's estate and a notice to creditors with the following language: "Notice is also given that (subject to Minn. Stat. 524.3-801) all creditors having claims against the Estate are required to present the claims to the Personal Representative . . . within four months after the date of this Notice or the claims will be barred." The letter also stated that "[a]fter appointment, the personal representative will be able to pay any bills, taxes, or claims which may be due and sell any property that must be converted to cash. After all of this has been taken care of, the personal representative will then make distributions to the heirs."

On April 10, 2010, Beverly Falk was appointed as the personal representative of mother's estate. That same day Falk called Jonathan Goossen to let him know of her appointment. She asked him about the Arizona home. He responded that it "had been taken care of" but would not elaborate.

In May 2010, Jonathan Goossen gave Falk a box of his mother's mail that contained unpaid bills in mother's name totaling approximately \$3,100. Falk, asserting that these bills should have been paid by Jonathan Goossen prior to his mother's death from accounts to which she had added his name, requested that Jonathan Goossen pay the bills. Jonathan Goossen sent a check to Falk for payment of those bills in the amount of \$3,170.45.

On January 11, 2011, Falk filed a final accounting for the estate. In the final accounting was a category for "Assets Omitted from Inventory," which included a claim for double damages for funds converted by Jonathan Goossen from the sale of the Arizona home and its contents. On March 2, 2011, Jonathan Goossen filed an objection to the inventory and final account, asserting claims of breach of fiduciary duty against Falk, the affirmative defense of good faith to the conversion, and \$13,827.26 for expenses.

The matter was tried to the probate court. After trial, the probate court issued an order finding that Jonathan Goossen converted the Arizona home and sale proceeds and that he did not conduct himself in good faith with regard to this transaction, entitling the estate to double the value of the converted property under Minn. Stat. § 524.392.¹ The probate court also found that all of Jonathan Goossen's claims for expenses were untimely and that the personal representative did not breach her fiduciary duties. The probate court denied Jonathan Goossen's claims and awarded the estate \$30,000 from Jonathan Goossen plus costs and disbursements. This appeal followed.

¹ The parties stipulated that the value of the Arizona home and its contents was \$15,000.

DECISION

I. Standard of review

This court's review of a probate order is limited to determining whether the probate court's findings are clearly erroneous or whether it erred in applying the law. *In re Estate of Simpkins*, 446 N.W.2d 188, 190 (Minn. App. 1989). "Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." Minn. R. Civ. P. 52.01. In applying Minn. R. Civ. P. 52.01, this court "view[s] the record in the light most favorable to the judgment of the district court." *Rogers v. Moore*, 603 N.W.2d 650, 656 (Minn. 1999). "The decision of a district court should not be reversed merely because the appellate court views the evidence differently." *Id.* "Rather, the findings must be manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *Id.* (quotation omitted). "Findings of fact are clearly erroneous only if the reviewing court is left with the definite and firm conviction that a mistake has been made." *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999).

II. Conversion of Arizona home

"If any person embezzles, alienates, or converts to personal use any of the personal estate of a decedent or ward before the appointment of a representative, such person shall be liable for double the value of the property so embezzled, alienated, or converted." Minn. Stat. § 525.392 (2010). Jonathan Goossen argues that the probate court erred in finding that he converted the Arizona home for his personal use.

In *Christensen v. Milbank Ins. Co.*, the supreme court noted that it has defined conversion as ““an act of willful interference with [the personal property of another], done, without lawful justification, by which any person entitled thereto is deprived of use and possession,’ and ‘the exercise of dominion and control over goods inconsistent with, and in repudiation of, the owner’s rights in those goods.’” 658 N.W.2d 580, 585 (Minn. 2003) (citing *Larson v. Archer-Daniels Midland Co.*, 226 Minn. 315, 317, 32 N.W.2d 649, 650 (1948) and *Rudnitski v. Seely*, 452 N.W.2d 664, 668 (Minn. 1990)). The supreme court noted with approval in *Christensen* the concept of intent articulated in the Restatement (Second) of Torts § 223 cmt. c (1965):

The intention necessary to subject to liability one who deprives another of the possession of his chattel is merely the intention to deal with the chattel so that such dispossession results. It is not necessary that the actor intend to commit what he knows to be a trespass or conversion. It is, however, necessary that his act be one which he knows to be destructive of any outstanding possessory right, if such there be.

Id.

Jonathan Goossen contends that the probate court could not have found that he converted the property because he did not ultimately use the funds from the sale of the Arizona home for his personal use. But the record reflects that he used the proceeds of the sale as he saw fit. All that the statute requires is conversion before a personal representative is appointed, and conversion is complete at the time it takes place. *Carpenter v. Am. Bldg. & Loan Ass’n*, 54 Minn. 403, 410, 56 N.W. 95, 96 (1893); *see also Sutton v. Great N. Ry. Co.*, 99 Minn. 376, 379, 109 N.W. 815, 816 (1906) (stating that “[a] conversion cannot be purged”). The record demonstrates that Jonathan Goossen

converted the Arizona home and the proceeds of the sale prior to the appointment of the personal representative. The probate court's finding that Jonathan Goossen converted the Arizona home and sale proceeds for his personal use is not clearly erroneous.

III. Lack of good faith

Jonathan Goossen argues that the probate court erred in finding that he did not act in good faith when he transferred title to the Arizona home to himself and sold it. Good faith is a defense to the imposition of double liability under Minn. Stat. § 525.392. *Chard v. Darlington*, 243 Minn. 489, 495-96, 68 N.W.2d 405, 409 (1955). “Where there is an honest belief that the property belongs to the one charged with the conversion of it or where he honestly believes that he has a right to possession of it, he should not be subjected to double liability.” *Id.* at 498-99, 62 N.W.2d at 411. Good faith can be found in cases where “there is a genuine question of ownership” or where there might be questions regarding whether a gift had been made. *Id.* at 499; 62 N.W.2d at 411.

Jonathan Goossen testified that he believed that he had a right to possession of the Arizona home. The probate court found, however, that Jonathan Goossen was not credible when he testified that, “in executing the [nonprobate] affidavit [], [he] did not notice that his name did not appear on the title,” and that his “mother had told him she had put his name on all of her assets.” Deference is given to the district court's credibility determinations, and this court will not disturb the district court's findings based on credibility determinations. *Estate of Hartz v. Nelson*, 437 N.W.2d 749, 754 (Minn. App. 1989), *review denied* (Minn. July 12, 1989). And even if Jonathan Goossen had a good faith belief that he had the right to possess the Arizona home, the record

supports the district court's finding that he did not go about obtaining possession in good faith because he had to sign separate false affidavits to transfer title to himself.

Jonathan Goossen relies on *Chard* to support his argument that he acted in good faith. 243 Minn. at 499, 68 N.W.2d at 411. The facts of this case, however, are distinguishable from those in *Chard*, in which the court found no evidence of bad faith because "all that the defendants did was to accept an envelope with their names on it, enclosing the bonds in various amounts, which they were told was given to them by decedent." *Id.* Here, Jonathan Goossen did not passively but mistakenly accept a transfer of title of the Arizona home into his name. He actively pursued the transfer and sale despite the fact that title to this asset was not in his name. The evidence in the record supports the probate court's finding that Jonathan Goossen did not act in good faith, and the finding is not clearly erroneous.

IV. Untimeliness of claims against the estate

Jonathan Goossen argues that the probate court erred in finding that his claims against the estate for estate-related expenses totaling \$13,827.26 were untimely. His argument is based on his assertion that his claim did not arise when he received the notice to creditors but rather when the estate made a claim against him for the sale of the Arizona home and its contents. This argument is without merit.

Minn. Stat. § 524.03-803 (2010) provides the time limits within which creditors must present claims against the estate. When a claim arises before the death of the decedent, Minn. Stat. § 524.3-803(a) governs the presentation of claims and provides:

All claims . . . against a decedent which arose before the death of the decedent . . . are barred against the estate . . . unless presented as follows: . . .

(2) in the case of a creditor who was served with notice under section 524.3-801 (c), within the later to expire of four months after the date of the first publication of notice to creditors or one month after the service.

When a claim arises after the death of the decedent, Minn. Stat. § 524.3-803(b) governs the period for presentation of the claim and provides, in relevant part:

All claims against a decedent's estate which arise at or after the death of the decedent . . . are barred against the estate . . . unless presented as follows:

(1) a claim based on a contract with the personal representative, within four months after performance by the personal representative is due;

(2) any other claim, within four months after it arises.

Because individuals with claims arising after death know of the death of the decedent, section 524.3-803(b)(2) does not require notice and sets forth only a four-month limitation period from the time the claim arises. *In re Estate of Hadaway*, 668 N.W.2d 920, 924 (Minn. App. 2003).

The probate court did not distinguish between claims that arose before or after mother's death in finding that Jonathan Goossen's claims were not timely. Jonathan Goossen contends that all of the claimed expenses arose after the death of mother but also argues that the issue to be decided by this court is whether the notice given by the estate was properly served, which would implicate section 524.3-803(a) regarding pre-death claims.

Typically claims arising before death include "last illness charges, charges for illness during the year immediately preceding death, personal service charges during

lifetime, recovery on warranties, liability as a surety or guarantor, claims of the state or county for support in state or county mental institutions, equitable claims, and other general contract claims.” *Hadaway*, 668 N.W.2d at 923 (quoting Robert A. Stein, *Stein on Probate*, § 6.01(c) (3d ed.1995)). “Claims arising after death include accountants’ fees, representative’s and attorneys’ fees, repair and maintenance expenses of property of the estate, insurance premiums, storage costs, platting costs, and charges for all services rendered to the personal representative for the estate.” *Id.*

In his objections to the inventory and final account, Jonathan Goossen claimed that he paid the following expenses from the proceeds of the sale of the trailer:

- (1) cremation expenses, \$2,350; (2) insurance for the St. James home, \$836.40;
- (3) packaging supplies, \$48.01; (4) death certificates, \$79; (5) travel expenses for his trip to Arizona, \$290.88; (6) lodging expense in Arizona, \$221.05; (7) toilet repair in Arizona home, \$9.57; (8) new tires for mother’s car, \$501.08; (9) Arizona taxes, \$52.41;
- (10) lot rental on Arizona home, \$4,166.66; (11) oil change for mother’s car, \$29.75;
- (12) utility bills for St. James home, \$352.93; (13) real estate taxes for St. James home, \$719; and (14) money paid to personal representative for unpaid bills, \$3,170.43.

The majority of these claims arose after mother’s death and were presentable under section 524.3-803(b)(2), within four months after the date on which they arose, or within four months after the date on which the expense was paid. The last payment made by Jonathan Goossen was in May 2010. The claims that arose before mother’s death, presentable under section 524.3-803(a), were required to be presented within four

months after the March 26, 2010 notice-to-creditors date. Jonathan Goossen presented his claims on March 2, 2011, far beyond the allotted time frame under either section.

In support of his argument that his claims were timely, Jonathan Goossen asserts that (1) he and Falk had a contract regarding the money he gave her to pay bills and he had not yet demanded repayment under the contract, (2) the notice to creditors was not effective because he never actually received the notice, and (3) he can show good cause for filing a late claim. None of these arguments has merit.

A. Contract

Jonathan Goossen asserts that he had an oral contract with Falk for the payment of \$3,170.43 that Jonathan Goossen gave to Falk to pay for mother's unpaid bills. He argues that his claim falls under the exception to section 524.3-803(b) for claims based on a contract with the personal representative that are not due for presentation until four months after performance of the personal representative is due. *See* Minn. Stat.

§ 524.3-803(b)(1) (2010). Falk denies that she and Jonathan Goossen had a contract requiring the estate to repay this money. The probate court did not make explicit findings regarding the existence of a contract because the contract theory was not squarely presented to it.

In his "Objections to Inventory and Final Account," Jonathan Goossen stated that he "agreed to provide \$3,170.43 to the estate so [Falk] could pay estate bills." But he did not claim in his objections or in his testimony at trial that he had a contract with Falk for repayment of the money he provided. On appeal, he does not point to any facts in the record that support his claim that he and Falk had such a contract.

Additionally, in an effort to persuade the district court that he did not convert the proceeds of the Arizona home to his personal use, Jonathan Goossen asserted that he paid “various bills and expenses related to his mother,” including “\$3,170.43 for monies paid to [the] personal representative” out of the proceeds of the sale of the Arizona home. This claim is inconsistent with his claim that he had a contract with the personal representative for reimbursement of the \$3,170.43. Jonathan Goossen has failed to establish the existence of a contract for reimbursement of these funds.

B. Notice to creditors

Jonathan Goossen asserts that he did not receive the notice to creditors and therefore it was not effective to limit the time for his claims. “A personal representative may accomplish service either by delivery of a copy of the required notice to the creditor, or by mailing a copy of the notice to the creditor by certified, registered, or ordinary first class mail.” *In re Estate of Kotowski*, 704 N.W.2d 522, 527 (Minn. App. 2005), *review denied* (Minn. Dec. 21, 2005). “[W]hen a statute provides for service by regular mail, service is not effective unless the mailing is actually received.” *Id.*

Jonathan Goossen testified that he did not actually receive the notice to creditors until after the personal representative called him, at which time he “looked through his trash and found it.” The probate court did “not find credible that he did not open a notice regarding the estate.” But regardless of whether he opened the notice, service was effective on receipt, and failure to open or read the notice does not nullify receipt.

C. Good cause for late claims

Jonathan Goossen claims that he had good cause for filing late claims, specifically that he had a “misunderstanding of the law of ownership.” Again Jonathan Goossen argues that his claim for expenses arose only at the time that the estate made a claim against him for the proceeds of the sale of the Arizona home. Jonathan Goossen does not provide any authority for his assertion that his subjective belief that he owned all of his mother’s assets at the time of her death constitutes good cause to untimely present his claims against her estate. Additionally, in order to assert a defense of good cause a creditor needs to petition the probate court to present a late claim. *See* Minn. Stat. § 524.3-803(c)(4)(ii) (providing that presentation for a claim can be made “upon allowance by the court upon petition of the personal representative or the claimant for cause shown on notice and hearing as the court may direct”). A petition for a late claim “may be granted in cases of ‘hardship, misunderstanding, and diligent but mistaken procedures’ but not in cases of ‘unexplained and inexcusable lack of diligence.’” *Kotowski*, 704 N.W.2d at 531 (citing *In re Estate of Thompson*, 484 N.W.2d 258, 261-62 (Minn. App. 1992)). It is not an abuse of discretion for the probate court to reject a petition when the petitioner does not present a significant reason for the delay. *Id.* In this case, Jonathan Goossen did not petition the probate court and the probate court found that his claims were not timely, implicitly finding that he did not present a significant reason for the delay. Because the record supports the finding, the probate court did not clearly err in finding the claims to be untimely.

Affirmed.