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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0991**

Carl Green d/b/a Signature Capital,
as assignee for Bob Kent Well Drilling,
Appellant,

vs.

Robert Clark,
Decedent,

Elizabeth Nelson,
Respondent,

Christian Clark,
Respondent,

Pine County Sheriff's Department,
Interested Observer.

**Filed December 24, 2012
Affirmed
Schellhas, Judge**

Pine County District Court
File No. 58-CV-09-279

Carl Green, Minnetonka, Minnesota (pro se appellant)

Elizabeth Nelson, Cambridge, Minnesota (pro se respondent)

Christian T. Clark, Mayer, Minnesota (pro se respondent)

Considered and decided by Schellhas, Presiding Judge; Kirk, Judge; and Harten, Judge.*

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges the district court's denial of an order for an execution sale of a decedent's homestead to satisfy a judgment. We affirm.

FACTS

In March 2009, a conciliation court awarded a \$6,538 money judgment to Bob Kent against respondent Robert Clark.

In May 2009, Robert Clark died intestate and his son, Christian Clark, petitioned to probate Robert Clark's estate, noting in the petition the debt underlying the money judgment in favor of Kent. In July 2009, Kent filed a written statement of claim and demand for notice for the money judgment with the probate court. On November 11, Kent received notice of a probate hearing scheduled for December 22, 2009. The notice read: "Any objections to the Petition must be filed with the Court prior to or raised at the hearing. If proper, and if no objections or claims are filed or raised, the Court may issue a decree distributing or assigning the Estate's assets." Kent did not attend the probate hearing on December 22.

On January 22, 2010, the probate court ordered its final decree of distribution in which it identified as homestead property real estate described as: "NW 1/4 of SW 1/4

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

EXCEPT the Northerly 330 feet, Section 7, Township 43 North of Range 19 West of the 4th Principal Meridian” (subject property). The probate court distributed Robert Clark’s entire estate, including the homestead property, to Robert Clark’s heirs, Christian Clark and Elizabeth Nelson, free and clear of any claim by Kent or his money judgment. Kent did not appeal from the decree of distribution.

On March 22, 2011, Kent assigned “all title, right and interest” in the money judgment to appellant Carl Green d/b/a Signature Capital. In March 2011, Signature Capital filed a written statement of claim in probate court, seeking to satisfy the money judgment. In April 2011, Signature Capital presented a writ of execution to the Pine County Sheriff’s Office, seeking to have the sheriff conduct an execution sale of the subject property to satisfy the money judgment against decedent Robert Clark. The sheriff refused to conduct the execution sale without a court order. Signature Capital moved the district court for an order to show cause why the sheriff should be compelled to conduct an execution sale of the subject property. The court denied the order to show cause, concluding that Signature Capital had failed to comply with the requirements of Minn. Stat. § 550.175 (2010) because, among other reasons, Signature Capital failed to provide the court sufficient information to determine “whether . . . the subject property is the homestead of a nondebtor.”

Signature Capital subsequently moved the district court to “determine there is no homestead exemption issue and for costs,” and later also moved the court for “Turnover and Costs pursuant to Minnesota Statute Section 548.09 Lien of Judgment; 510.01 Homestead Defined; Exempt; Exception; 510.07 Sale or Convey of Homestead

Permitted; 550.00 Execution After Death.” The district court denied both motions, reasoning that Signature Capital is “collaterally estopped from taking action to collect on the [money] judgment in this civil court action” because it “failed to fully pursue [its] claim in the probate court file.” The district court concluded that the subject property is “the decedent’s homestead” and, “[a]s such, the debt owed to [Signature Capital] was uncollectible.”

Signature Capital appeals.¹

D E C I S I O N

The probate court decree identified the subject property as Robert Clark’s homestead; completely distributed the homestead to Robert Clark’s two heirs, Christian Clark and Elizabeth Nelson; and concluded that the homestead is

exempt from all debts and charges in the Probate Court or may be appropriated in kind in reimbursement or payment of the allowances to spouse and minor children mentioned in M.S.A. §524.2-403, expenses of administration, funeral expenses, expenses of last illness, debts having preference under the laws of the United States, and taxes, or otherwise qualified for summary assignment or distribution pursuant to M.S.A. §524.3-1203.

¹ Signature Capital does not contest any of the district court’s factual findings and admits many of them in its statement of the case and facts. *See Angell v. Enfield*, 392 N.W.2d 913, 913 n.1 (Minn. App. 1986) (“[Appellant] provided this court with only a transcript of the court’s instructions to the jury, not a full transcript. We therefore recite only the trial court’s findings of fact and the undisputed facts presented in each party’s brief.”); *Wehner v. Wehner*, 374 N.W.2d 569, 571 (Minn. App. 1985) (“Statements of facts made in briefs are to be taken as binding admissions.”); *see also Truesdale v. Friedman*, 267 Minn. 402, 404, 127 N.W.2d 277, 279 (1964) (“[T]he party seeking review has the duty to see that the appellate court is presented with a record which is sufficient to show the alleged errors and all matters necessary for consideration of the questions presented.”).

More than two years later, based on the probate court decree, the district court concluded that “Christian T. Clark and Elizabeth R. Nelson own the subject property free and clear of any claim made by [Signature Capital].”

On appeal, Signature Capital makes various arguments regarding why the subject property is not “exempt homestead property,” why Signature Capital has a “perfected” judgment lien and “valid charge,” and why the district court erroneously ordered that Signature Capital is “prohibited from seeking a sheriff’s sale of the subject property with the proceeds thereof to be applied to satisfy the debt incurred by Robert Clark.” Signature Capital’s arguments are unpersuasive.

Res Judicata

A probate court decree “is res judicata” and “binding on everyone interested in the estate if the decree covers a subject over which the court has jurisdiction,” *regardless whether the decree is “right or wrong,”* unless “the decision is . . . reversed or modified on appeal or in a direct proceeding.” *Kirsch v. Kahn*, 276 Minn. 294, 299, 149 N.W.2d 676, 680 (1967) (emphasis added); *see Bengtson v. Setterberg*, 227 Minn. 337, 347, 35 N.W.2d 623, 628 (1949) (noting that probate court judgment, “[u]nless vacated, . . . is complete protection against all excluded claimants, and excludes all not thereby adjudicated to be distributees” (quotation omitted)); *see also Rucker v. Schmidt*, 794 N.W.2d 114, 121–22 (Minn. 2011) (“Pursuant to res judicata, a judgment on the merits of a lawsuit is a bar to a second lawsuit for the same cause of action, or any other matter that could have been, but was not, litigated in the first lawsuit. Its virtue is to relieve parties of the burden of relitigating issues already determined in a prior action.” (quotation and

citation omitted)); *Greer v. Prof'l Fiduciary, Inc.*, 792 N.W.2d 120, 127 (Minn. App. 2011) (concluding that “[i]f a probate court has jurisdiction over a matter, its ruling is not subject to collateral attack,” and noting that a “collateral attack” is “an attack on a judgment in a proceeding other than a direct appeal” (quotations omitted)).

An appellate court “review[s] the application of res judicata de novo.” *Rucker*, 794 N.W.2d at 117. Here, the probate court had jurisdiction over the subject property because it was part of Robert Clark’s estate. *See* Minn. Const. art. VI, § 11 (providing probate courts with “[o]riginal jurisdiction in law and equity for the administration of the estates of deceased persons”); Minn. Stat. § 524.1-302(b) (2012) (“The [probate] court has full power to make orders, judgments, and decrees and take all other action necessary and proper to administer justice in the matters which come before it.”). The probate court had jurisdiction to determine whether the subject property “constitutes[] the homestead” and “to render a decree of distribution of the homestead.” *Bengtson*, 227 Minn. at 362, 35 N.W.2d at 634–35 (concluding that decedent’s homestead was “subject to the jurisdiction of the probate court[] and that the final decree assigning it to the widow, *even though erroneous*, is binding and conclusive on all those interested in the estate” (emphasis added)). Signature Capital is a person interested in the estate because, as Kent’s assignee, it seeks to satisfy a money judgment against the decedent’s estate. *See* Minn. Stat. § 524.1-201(32) (2012) (defining “[i]nterested person[s]” as including “creditors . . . and any others having a property right in or claim against the estate of a decedent”). Because the probate court distributed Robert Clark’s estate, including the subject property, res

judicata bars Signature Capital's attempt to enforce the judgment against the distributed property.

Collateral Estoppel

Without addressing the doctrine of res judicata, the district court concluded that Signature Capital's enforcement of the judgment is barred by the doctrine of collateral estoppel. The district court is correct that the collateral-estoppel doctrine bars Signature Capital's enforcement of the money judgment against property distributed from the decedent-judgment debtor's estate.

Collateral estoppel is "a miniature" of the more generally applicable res judicata, and the two doctrines are "related doctrines . . . based on the same principle." *Hauschildt v. Beckingham*, 686 N.W.2d 829, 837 (Minn. 2004) ("Fundamental to both doctrines is that a right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction cannot be disputed in a subsequent suit between the same parties or their privies." (quotations omitted)).

For collateral estoppel to apply, all of the following prongs must be met: (1) the issue must be identical to one in a prior adjudication; (2) there was a final judgment on the merits; (3) the estopped party was a party or was in privity with a party to the prior adjudication; and (4) the estopped party was given a full and fair opportunity to be heard on the adjudicated issue.

Id. (quotation omitted). "Whether collateral estoppel precludes litigation of an issue is a mixed question of law and fact that [appellate courts] review de novo." *Id.*

Here, resolving Signature Capital's arguments turns on the same issue faced by the probate court—determining the lawful distribution of Robert Clark's estate. The probate

court filed its final decree on the issue in January 2010, distributing Clark’s estate to persons not including Signature Capital. Signature Capital is in privity with a party to the probate proceeding because Signature Capital received the money judgment from Kent, Kent participated in the probate proceeding by filing a statement of claim and demand for notice for the money judgment, and Signature Capital is bound by the probate court decree. *See City of Minneapolis v. Minneapolis Transit Co.*, 270 Minn. 133, 137, 133 N.W.2d 364, 368 n.1 (1965) (noting that an individual “is a party to the proceeding” if the individual “participates, with or without formal pleading or intervention, as an active contestant on the merits for the determination of issues of law or fact, and who by the outcome of the proceeding will be bound and affected either favorably or adversely, with respect to an asserted interest peculiar to him” (quotation omitted)). And Kent received notice of the probate court proceedings, which Signature Capital concedes on appeal was “adequate notice.”

We conclude that the doctrines of res judicata and collateral estoppel bar Signature Capital’s attempt to enforce the money judgment against the subject property distributed from Robert Clark’s estate. The district court did not err by concluding that Christian Clark and Elizabeth Nelson “own the subject property free and clear of any claim made by [Signature Capital]” and did not err by denying Signature Capital’s request for a sheriff’s sale to satisfy the money judgment.

Affirmed.