STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1342

In re the Estate of:
Doris M. Hron, Deceased

Filed June 3, 2008
Affirmed
Ross, Judge

Itasca County District Court
File No. 31-PR-06-4250

Thomas G. Hron, 15133 Staghorn Drive, Fountain Hills, AZ 85268 (pro se appellant)

Stephen M. Baker, Baker Law Office, P.O. Box 924, 322 Railroad Avenue, Walker, MN 56484 (for respondents)

Considered and decided by Johnson, Presiding Judge; Lansing, Judge; and Ross, Judge**.**

U N P U B L I S H E D O P I N I O N

ROSS, Judge

Thomas Hron appeals from an adverse judgment in his challenge to the validity of his deceased mother's will. He disputes the district court's factual findings, arguing that the will was a product of fraud, undue influence, and a lack of testamentary capacity. He also argues that he was denied due process and asserts that the district court judge should have recused herself from the case. Because the district court's essential findings are

supported by the record, because Thomas Hron has not shown he was denied due process, and because the district court judge's recusal was not required, we affirm.

FACTS

This case involves a surviving son's challenge to the will of Doris Hron, who died on May 7, 2005. Thomas Hron petitioned the district court to be appointed as the personal representative for his mother's estate, in opposition to the will, which named three of Doris Hron's six children, Carol Cartie, William Hron, and David Hron, as personal representatives. Cartie, William Hron, and David Hron opposed Thomas Hron's motion.

Thomas Hron did not attend the April 2, 2007, bench trial, but his two attorneys did. They also represented Karen Sinkola, one of Doris Hron's daughters. Barbara Rassmussen, another daughter, was present but unrepresented by counsel. Thomas Hron argued through his attorneys that Doris Hron's 2004 will should be set aside as being a product of fraud and undue influence. He also argued that Doris Hron lacked capacity to make the 2004 will. He urged the court to probate her 2000 will and 2001 codicil instead of the 2004 will.

The district court heard substantial testimony from Carol Cartie regarding the validity of the 2004 will. According to Cartie, Doris Hron decided to change her will in October 2004, replacing her 2000 will and 2001 codicil. Cartie drove Doris Hron to the office of Kent Nyberg, a lawyer, who drafted a new will. Cartie was present with Nyberg and Doris Hron. Doris Hron indicated that she was not satisfied with the draft, so Cartie took her to another lawyer, Larke Huntley, in November 2004. Cartie also was present at

the meeting between Doris Hron and Huntley. At Doris Hron's and Huntley's direction, Cartie made hand-written changes to the Nyberg draft. Huntley had offered to type the will, including the changes, for $300, but he recommended that Cartie could type it and save Doris Hron the fee. Doris Hron asked Cartie to type the will and to incorporate her changes. The final version of the will, as typed by Cartie, included language stating that the will had been drafted by Nyberg, even though Nyberg's draft was changed by Huntley and Doris Hron. Cartie testified that the only changes she made to the Nyberg draft were at Doris Hron's direction. Cartie told the court that Doris Hron was intelligent, strong-willed, and had a sharp mind until her death. She testified that Doris Hron understood the implications of the draft will and the changes.

Cartie also testified about sibling rivalry and tension with their mother. She explained that her siblings were combative and that Doris Hron's relationships with Thomas Hron, Sinkola, and Rassmussen had recently deteriorated. According to Cartie, Doris Hron felt badgered by Sinkola and feared Rassmussen, and she testified that Thomas Hron approached Doris Hron and harshly demanded her Civil War heirlooms. Cartie maintained that Doris Hron was very upset at Thomas Hron's demands, rebuffed him, and called Cartie.

Sinkola gave competing testimony. She attempted to discredit Cartie's testimony as reflecting her desire for personal gain. Sinkola testified that she had a good relationship with Doris Hron. She testified that in 1992, Doris Hron deeded her property to each of her six children in equal parts, and that Thomas Hron managed Rassmussen's share. Sinkola admitted that she doubted whether Doris Hron's estate contained personal

property of enough value to motivate anyone to unduly influence her will. And she admitted that she had been told that Doris Hron refused to see her when Hron was in a nursing home. She also testified that even when Doris Hron was hospitalized, Hron always knew who Sinkola was, knew how to sign her own name, and was strong-minded. She acknowledged that Doris Hron understood that she was changing her will, but she suggested that Hron might not have been properly informed of its contents.

The district court found Cartie's testimony to be credible. The court determined that Doris Hron validly executed her 2004 will and that Cartie did not unduly influence her. The district court followed the 2004 will and appointed Carol Cartie, William Hron, and David Hron as personal representatives, and the court probated the will. Thomas Hron appeals.

D E C I S I O N

I

Thomas Hron challenges several factual findings. We review a district court's factual findings under a clearly erroneous standard. *Busch v. Comm'r of Pub. Safety*, 614 N.W.2d 256, 258 (Minn. App. 2000). When the record supports a finding by the district court, we rely on that finding. *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999). And we view the record in the light most favorable to the district court's ruling. *Rogers v. Moore*, 603 N.W.2d 650, 656 (Minn. 1999). In doing so, we also defer to the credibility determinations of the district court. Minn. R. Civ. P. 52.01. Testimonial evidence is sufficient to support a district court's factual findings. *Gada v. Dedefo*, 684 N.W.2d 512, 515 (Minn. App. 2004).

Thomas Hron argues that the district court erred by determining that Doris Hron's will was not forged, and he claims that Doris Hron lacked capacity to make the 2004 will and that the will is a product of Cartie's undue influence. Finally, he argues that the district court erred by finding that Sinkola had been awarded a one-fifth interest in Doris Hron's property before her death.

If the record contains sufficient evidence to support the district court's findings that the will is authentic, that Doris Hron did not lack capacity to make the will, and that Cartie did not unduly influence Doris Hron, then the findings are not clearly erroneous. *See Fletcher*, 589 N.W.2d at 101–02 (noting that a finding is not clearly erroneous if supported by record evidence). There is ample evidence to support the findings.

Cartie's testimony establishes a basis for the finding of authenticity. She said that she typed the 2004 will at Doris Hron's direction, and the district court explicitly found Cartie's testimony to be credible. Forgery consists of making or altering a writing with fraudulent intent. Minn. Stat. § 609.63, subd. 1 (2006); *see In re Boese's Estate*, 213 Minn. 440, 443, 7 N.W.2d 355, 257 (1942) (noting that a will is forged if it has not been duly executed by the testator). Cartie's testimony supports the district court's finding that the will is not the product of fraud or forgery. The same testimony also supports the finding that Doris Hron was not the subject of any undue influence, which is influence that supplants the will of the testator with the will of the influencer. *In re Peterson's Estate*, 283 Minn. 446, 448–49, 168 N.W.2d 502, 504 (1969). The district court did not clearly err by rejecting Thomas Hron's misconduct-based challenges to the will.

The testimony also supports the finding regarding Doris Hron's capacity to execute her 2004 will. Both Cartie and Sinkola, the only witnesses to testify, stated that Doris Hron was intelligent, cogent, and possessed a sharp mind. A person has testamentary capacity if she understands the nature, circumstances, and extent of her property and issue and she is able to mentally consider these things long enough to form a rational judgment concerning them. *In re Congdon's Estate*, 309 N.W.2d 261, 266–68 (Minn. 1981). Cartie and Sinkola's testimony supports the district court's finding that Doris Hron had testamentary capacity.

Because Cartie's testimony supports the district court's findings that the 2004 will was not the result of artifice or undue influence or a deficient mind, the district court's findings regarding the will's validity are not clearly erroneous. *See Fletcher*, 589 N.W.2d at 101.

Thomas Hron also argues that the district court clearly erred by finding that Sinkola had been awarded a one-fifth interest in Doris Hron's property before her death. A finding is clearly erroneous if it is unsupported by the record. *Parranto Bros. v. City of New Brighton*, 425 N.W.2d 585, 591 (Minn. App. 1988), *review denied* (Minn. July 28, 1988). This finding is clearly inaccurate because uncontradicted trial testimony indicates that Sinkola received a one-sixth (not a one-fifth) interest in the non-probate property. But this discrepancy does not bear materially on the district court's legal conclusions. Because the mistake did not affect the district court's judgment, it is harmless error. *See Rosendahl v. Nelson*, 408 N.W.2d 609, 612 (Minn. App. 1987) (stating that where there is sufficient evidence to support findings of fact, error in any one of the findings that does

not affect the result is harmless error and immaterial to the decision on appeal.), *review denied* (Minn. Sept. 18, 1987); *see also* Minn. R. Civ. P. 61 (stating that courts shall disregard harmless errors). We therefore disregard the error.

II

Thomas Hron next raises due process arguments. None persuades us. He argues that the district court violated Barbara Rassmussen's constitutional rights when it instructed her not to testify from the gallery. But Thomas Hron may not argue on behalf of Rassmussen because although a person who is not a licensed attorney may represent himself in court, he may not represent others. Minn. Stat. § 481.02, subd. 1 (2006); *accord In re Discipline of Jorissen*, 391 N.W.2d 822, 825 (Minn. 1986) ("[A] non-lawyer [may not act] in a representative capacity in protecting, enforcing, or defending the legal rights of another.") And because Rassmussen is not a party to the appeal, we cannot grant the relief that Thomas Hron seems to request on her behalf. We therefore do not reach the merits of the argument as it regards Rassmussen.

Thomas Hron argues that the district court violated his due process right to be heard. The argument is not compelling. Due process requires notice and an opportunity to be heard. *Haefele v. Haefele*, 621 N.W.2d 758, 764 (Minn. App. 2001), *review denied* (Minn. Feb. 21, 2001). Participation in a hearing by a party's attorney constitutes an opportunity to be heard. *See Imperial Skyliner Auto-Wash Sales Corp. v. Whinnery*, 301 Minn. 91, 94–95, 221 N.W.2d 716, 718 (1974). Although diabetes prevented Thomas Hron from attending the hearing, his attorneys were in court for the entire proceeding, participated in the hearing, and argued for Thomas Hron's position. Because Thomas

Hron was represented at trial, his due process rights were not violated. Thomas Hron adds that because he was too ill to attend, the district court should have continued the trial until his health had improved. We will not reverse the district court's judgment based on an issue not presented to the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Thomas Hron's attorney never asked for a continuance, and we therefore consider this issue to be waived.

In his reply brief, Thomas Hron seems to argue that limiting our scope of appellate review to whether evidence sustains the findings of fact and conclusions of law violates due process. *See Tyroll v. Private Label Chems., Inc.*, 505 N.W.2d 54, 56–57 (Minn. 1993) (explaining that in an appeal from a judgment where there has been no motion for a new trial, review is limited to whether the evidence sustains the findings of fact and whether such findings sustain the conclusions of law and the judgment). The argument is not developed and Thomas Hron does not explain how limiting appellate review violates due process. We do not consider issues that are inadequately briefed. *Ganguli v. Univ. of Minn.*, 512 N.W.2d 918, 919 n.1 (Minn. App. 1994). Thomas Hron has given no due process reasons to warrant reversal.

III

Finally, Thomas Hron asserts that the district court judge should have removed herself from the case for two reasons. His first ground is that the judge was not impartial, as evidenced by the possibility that the judge may have granted Cartie's daughter an order for protection in 2001 or 2002. His second ground is that because Cartie was an employee of the Minnesota Citizen League, the judge would have known of her.

A party's failure to move to disqualify an allegedly biased judge results in a waiver of the right to assert bias on appeal. *Baskerville v. Baskerville*, 246 Minn. 496, 501, 75 N.W.2d 762, 766 (1956). Thomas Hron's attorney did not move to disqualify the judge at the trial. Thomas Hron therefore waived this argument on appeal. We note, without further discussion, that the challenge to the district court judge's impartiality also appears to be highly unpersuasive on the merits. Thomas Hron does not claim that the judge was actually biased in Cartie's favor, only that the judge might have known her from a prior proceeding in 2001 or 2002 or from shared affiliation with a community organization. "The appearance standard requires recusal only when impartiality can reasonably be questioned, however, not merely when it may somehow be questioned." *Roatch v. Puera*, 534 N.W.2d 560, 563 (Minn. App. 1995).

Affirmed.