STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1258

In re the Estate of:
Victor L. Pintok, Deceased.

Filed February 1, 2011
Affirmed
Schellhas, Judge

Crow Wing County District Court
File No. 18-PR-08-7849

Richard A. Ohlsen, Richard A. Ohlsen, Ltd., Brainerd, Minnesota (for appellant Matthew Pintok)

Bruce B. Bundgaard, Crosslake, Minnesota (for respondent Lynn Mikkelson)

Considered and decided by Ross, Presiding Judge; Hudson, Judge; and Schellhas, Judge.

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

SCHELLHAS, Judge

In this probate case, appellant challenges the district court's orders denying his request for a jury trial, admitting to probate the last will and testament of the decedent and appointing a personal representative, and denying appellant's motion for amended findings of fact and conclusions of law or a new trial. Because appellant's arguments lack merit, we affirm.

FACTS

Victor Pintok (the decedent) had two children, respondent Lynn Mikkelson and appellant Matthew Pintok. The decedent died on October 31, 2008. On November 25, 2008, Mikkelson petitioned the district court to appoint her as personal representative of the decedent's estate and to probate the decedent's purported last will and testament, dated April 14, 2003. Pintok thereafter filed several documents: a demand for notice; a demand for bond by interested person; a petition objecting to the appointment of Mikkelson as personal representative; an objection to the formal probate of his father's purported will; a petition for formal adjudication of intestacy, determination of heirs, and appointment of personal representative; and a demand for a jury trial. The district court denied Pintok's request for a jury trial, and the other matters were tried to the court on September 16, 2009.

After completion of the trial, the district court concluded that the decedent's will was valid under Minn. Stat. § 524.2-502 (2010[1]), ordered the admission of the will to probate, and appointed Mikkelson personal representative of the decedent's estate pursuant to the decedent's nomination in his will. Pintok moved for amended findings of fact, conclusions of law and order, or alternatively, a new trial. The district court denied Pintok's motion.

This appeal follows.

[1] The district court applied an earlier version of the probate code. Because the relevant statutes have not changed, we apply the current version of the probate code.

D E C I S I O N

Pintok argues on appeal that the district court: (1) erred by denying his request for a jury trial; (2) erred by denying his motion for amended findings, conclusions of law, and order; and (3) erred by denying his motion for a new trial. We address Pintok's arguments in turn.

Denial of Request for Jury Trial

Pintok argues that he timely demanded a jury trial and, therefore, "is entitled to a jury as a matter of right."

Under the probate code, "a party is entitled to trial by jury in any proceeding in which any controverted question of fact arises as to which any party has a constitutional right to trial by jury." Minn. Stat. § 524.1-306(a) (2010). No constitutional right to a jury trial in probate proceedings exists. *In re Estate of Prigge*, 352 N.W.2d 443, 446 (Minn. App. 1984). When no constitutional right to a jury trial exists, "the court in its discretion may call a jury to decide any issue of fact, in which case the verdict is advisory only." Minn. Stat. § 524.1-306(b) (2010). Pintok offers no legal authority to support his argument that the district court abused its discretion by denying his request for a jury trial and we are aware of none.

We conclude that the district court did not err by denying Pintok's request for a jury trial.

Pintok's Motion for Amended Findings, Conclusions of Law, and Order

"[T]he court may amend its findings or make additional findings, and may amend the judgment accordingly if judgment has been entered." Minn. R. Civ. P. 52.02. "[A]

proper motion for amended findings must both identify the alleged defect in the challenged findings and explain why the challenged findings are defective." *Lewis v. Lewis*, 572 N.W.2d 313, 315 (Minn. App. 1997) (emphasis omitted),[2] *review denied* (Minn. Feb. 19, 1998). "[T]he moving party should address the record evidence, explain why the record does not support the district court's findings, and explain why the proposed findings are appropriate." *Id.* at 316. Whether to grant a motion for amended findings rests within the district court's discretion, and this court will not reverse absent an abuse of that discretion. *Zander v. Zander*, 720 N.W.2d 360, 364 (Minn. App. 2006), *review denied* (Minn. Nov. 14, 2006).

Findings of Fact

Pintok argues that the district court's findings of fact are clearly erroneous.

"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. "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) (quotation omitted). If the record contains reasonable evidence to support the district court's findings of fact, a reviewing court should not

[2] *Lewis* was overruled regarding the appeal-period tolling effects of a motion for amended findings, but "[d]istrict courts should . . . continue to use *Lewis* to determine whether a motion for amended findings has the necessary components." *State by Fort Snelling State Park Ass'n v. Mpls. Park & Recreation Bd.*, 673 N.W.2d 169, 178 n.1 (Minn. App. 2003), *review denied* (Minn. Mar. 16, 2004).

disturb those findings. *Id.* This court's province is not to reconcile conflicting evidence. *Id.*

Finding No. 6

Pintok first challenges the finding that "Edward Shaw, the attorney who prepared the will, personally observed Victor L. Pintok sign his name on the April 14, 2003 Last Will and Testament of Victor L. Pintok." The attorney testified that he saw the decedent sign the will on April 14, 2003. The record contains no contrary evidence. The district court's finding therefore is supported by reasonable evidence, and we will not disturb it.

Finding No. 7

Pintok next challenges the finding that "Mr. Shaw introduced two witnesses, Michelle Stenglein and Theresa Barrett, to Victor L. Pintok. That the two witnesses personally observed Victor L. Pintok sign his name on the April 14, 2003 Last Will and Testament of Victor L. Pintok." Both witnesses testified that they were introduced to the decedent and observed him sign the will on April 14, 2003. The record contains no contrary evidence. The district court's finding therefore is supported by reasonable evidence, and we will not disturb it.

Finding No. 8

Pintok next challenges the finding that "Mr. Shaw indicated that on April 14, 2003, Victor L. Pintok appeared cognizant of his heirs and assets and that he appeared of sound mind and mental capacity." Shaw testified that at his initial meeting with the decedent on March 3, 2003, the decedent showed no signs of mental deficiency, was cognizant of his heirs and assets, and appeared to be of sound mind and mental capacity.

But Shaw did not testify about the decedent's capacity on April 14, 2003, the day the will was signed. The finding therefore is clearly erroneous because Shaw did not testify about the decedent's capacity on the date contained in the finding. Yet, as discussed below, the record does contain other undisputed evidence that the decedent appeared to be of sound mind and mental capacity on April 14, 2003. The error therefore is harmless, and we will ignore it. Minn. R. Civ. P. 61.

Finding Nos. 9, 10, and 12

Pintok next challenges three findings that are related: "both witnesses believed Victor L. Pintok to be of sound mind and memory"; "both witnesses believed Victor L. Pintok to have a mental capacity sufficient to dispose of his property through the Last Will and Testament"; and "Ms. Stenglein would not have signed the will if she had any reason to believe that Victor Pintok was not of sound mind and body. According to Ms. Stenglein, Victor Pintok knew what he was signing."

"The attesting witnesses to a will are competent to testify and give an opinion as to the testamentary capacity of the testator." *Geraghty v. Kilroy*, 103 Minn. 286, 288, 114 N.W. 838, 839 (1908). Here, both witnesses testified that they believed the decedent to be of sound mind and memory on April 14, 2003. Both witnesses also testified that they believed the decedent to be under no constraint or undue influence on April 14, 2003. Ms. Stenglein testified that she would not have signed the will if she had any reason to believe that the decedent was not of sound mind and memory or under any constraint or undue influence. Ms. Stenglein also testified that the decedent said that he knew what he

was signing. The record contains no evidence suggesting that the decedent lacked mental capacity.

The district court's findings are supported by reasonable evidence, and we will not disturb them.

Finding No. 17

Pintok next challenges the finding that "Matthew Pintok had not been on speaking terms with his father for several years prior to his death." Pintok testified that when the will was signed in 2003, he and the decedent "weren't talking anymore," and that "[i]t had already been a couple of years since we had talked or almost a couple of years." Pintok further testified that he had not spoken with the decedent for approximately 20 months at the time the will was signed. But Pintok did not testify about whether he and the decedent had spoken between the signing of the will in 2003 and the decedent's death in 2008, and the record contains no evidence about whether Pintok and the decedent were on speaking terms during these years prior to the decedent's death. And even if Pintok was on speaking terms with the decedent after execution of his will and prior to his death, the fact would not impact the validity of the will or any other issues raised by Pintok. *See* Minn. Stat. § 524.2-502 (stating the requirements for a valid will). Therefore, any error in the district court's finding is harmless, and we ignore harmless error. Minn. R. Civ. P. 61.

Finding No. 19

Pintok next challenges the finding that

> Mr. Shaw met with Victor Pintok and discussed the provisions of the Will. Mr. Shaw discussed the provision in the Will wherein Victor Pintok provided more for his daughter than for his son. Mr. Shaw testified that Victor Pintok explained his reasoning which appeared to be valid. According to Mr. Shaw, Victor Pintok appeared cognizant of his assets, heirs and intentions.

Shaw testified to each of these facts, and the record contains no contrary evidence. The district court's finding therefore is supported by reasonable evidence, and we will not disturb it.

Finding No. 20

Pintok next challenges the finding that Shaw witnessed the decedent and the two attesting witnesses sign the will. Shaw testified to this. Additionally, Stenglein testified that Shaw was present when the will was signed. The record contains no contrary evidence. The district court's finding therefore is supported by reasonable evidence, and we will not disturb it.

Finding No. 21

Pintok next challenges the finding that "none of the Petitions indicate the existence of any unrevoked testamentary instrument . . . which is not filed for probate in this Court, except for the April 14, 2003 Last Will and Testament filed with the Petition of Lynn Mikkelson." The record contains no evidence of any other testamentary instrument. Furthermore, Pintok filed a petition for intestacy stating that he believed that the decedent

died without a will. The district court's finding therefore is supported by reasonable evidence, and we will not disturb it.

Validity of Will

Pintok argues that the district court erred by concluding that the will was valid under Minn. Stat. § 524.2-502.[3]

A will is properly executed if it is in writing, signed by the testator, and signed by two persons each of whom witnessed the signing.[4] Minn. Stat. § 524.2-502. Here, the will is in writing. The will is signed by the decedent testator. The will is signed by two individuals who witnessed the decedent sign the will.

"[W]hen a will contains an attestation clause regular in form, and the signatures of the testator and the witnesses are genuine, the will is presumed to have been duly executed and the contestant has the burden of proving that it was not properly executed." *Johnson v. Heltne*, 298 Minn. 187, 190, 214 N.W.2d 224, 226 (1974). But "even though such a will carries with it a presumption of due execution, it is still a question of fact whether the will was executed in the manner required by law." *Id.*

In this case, the district court made numerous factual findings regarding the decedent's execution of the will. The court's findings are supported by reasonable

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[3] Pintok argues at length that the will was not a self-proved will under Minn. Stat. § 524.2-504 (2010). Mikkelson concedes that the will was not a self-proved will.

[4] In addition to his other arguments, citing Minn. Stat. § 524.2-1004 (2010), Pintok argues that "[t]he law also requires that a will of multiple pages be signed on every page." Section 524.2-1004 applies to international wills. Decedent's will is not an international will. Therefore, section 524.2-1004 is inapplicable to this case. *See* Minn. Stat. § 524.2-1001, subd. 2 (2010) (stating that a will executed in conformity with Minn. Stat. §§ 524.2-1002–1005 (2010) is an international will).

evidence in the record, which contains no evidence of duress, undue influence, or lack of capacity. Both witnesses testified that they believed Victor Pintok to be under no constraint or undue influence on April 14, 2003. Both witnesses testified that they believed the decedent to be of sound mind and memory and to have a mental capacity sufficient to dispose of his property through his will. We will not disturb the court's findings. The court did not err by concluding that the will is valid.

Because the district court's findings are reasonably supported by record evidence, except for the harmless error noted, and its conclusions are correct, we conclude that the court did not abuse its discretion by denying Pintok's motion for amended findings, conclusions of law, and order.

Pintok's Motion for New Trial

Although not explicitly stated, Pintok appears to argue that under Minn. R. Civ. P. 59.01(g), the district court should have granted a new trial because the decision "is not justified by the evidence, or is contrary to law." "This court reviews a district court's decision whether to order a new trial for an abuse of discretion." *Zander*, 720 N.W.2d at 364–65. Because the district court's conclusion that the will is valid is supported by record evidence and the court correctly concluded that the will is valid under Minn. Stat. § 524.2-502, the court did not abuse its discretion by denying Pintok's motion for a new trial.

Affirmed.