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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-845**

Elizabeth Bracht,
Relator,

vs.

Bracht Bros., Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed February 21, 2012
Affirmed
Halbrooks, Judge**

Department of Employment and Economic Development
File No. 27079591

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Considered and decided by Halbrooks, Presiding Judge; Stoneburner, Judge; and
Ross, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Relator challenges the unemployment-law judge's (ULJ) determination that she is ineligible for unemployment benefits under Minn. Stat. § 268.085, subd. 9(a) (2010), arguing that the ULJ erred by concluding that she owns or controls 25% of her family's business. We affirm.

FACTS

Relator Elizabeth Bracht has worked as a seasonal truck driver for her family's sand-and-gravel mining company, respondent Bracht Bros., Inc., since the early 1980s. In January 2011, she was laid off and sought unemployment benefits.

The Minnesota Department of Employment and Economic Development (DEED) determined that, as part owner of her family's business, Bracht was eligible for only five weeks of unemployment benefits under Minn. Stat. § 268.085, subd. 9(a) (2010), which limits the time period that business owners can receive unemployment benefits to five weeks and defines business owners as individuals who own or control 25% or more of a company and were paid less than a statutory minimum. Bracht Bros. appealed DEED's determination.

At a hearing before the ULJ, Bracht's sister, who appeared on behalf of Bracht Bros., testified that she, Bracht, and their two brothers each own 7.75% of the company. Their mother's estate, which has been active since their mother's death in April 2006, owns the remaining 69%. Bracht's sister also testified that she and one of her brothers administer the estate, that the estate is still active because the siblings do not get along,

and that the business would likely close if the estate were settled. Based on the evidence, the ULJ concluded that Bracht is entitled to a one-fourth share of the estate, which translates into ownership of an additional 17.25% of the company.

The ULJ determined that Bracht “indirectly owns or controls 25[%] or more” of Bracht Bros. because she already owned 7.75%, and is entitled to an additional 17.25% from her mother’s estate. Because Bracht did not earn \$7,500 or more in each of the previous 16 quarters, the statutory exception was inapplicable. Therefore, the ULJ concluded that Bracht is limited to five weeks of unemployment benefits (or \$1,885). This certiorari appeal follows.

D E C I S I O N

This court may affirm, reverse, remand, or modify a decision by the ULJ if the relator’s rights are substantially prejudiced by findings or conclusions that are, among other possibilities, based on legal error or findings that are unsupported by the record. Minn. Stat. § 268.105, subd. 7(d)(4)-(5) (2010).

Bracht argues that the ULJ erred by finding that she owns and controls 25% or more of Bracht Bros. and is therefore a business owner under Minn. Stat. § 268.085, subd. 9(a). That provision states:

Wage credits from an employer may not be used for unemployment benefit purposes by any applicant who:

- (1) individually, jointly, or in combination with the applicant’s spouse, parent, or child owns or controls directly or indirectly 25 percent or more interest in the employer; or
- (2) is the spouse, parent, or child of any individual who owns or controls directly or indirectly 25 percent or more interest in the employer.

. . . This subdivision does not apply if the applicant had wages paid in covered employment of \$7,500 or more from the employer covered by this subdivision in each of the 16 calendar quarters prior to the effective date of the benefit account and all taxes due on those wages have been paid.

Minn. Stat. § 268.085, subd. 9(a).

To the extent that we review factual findings made by the ULJ, we will not disturb them if they are supported by the evidence. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). But our review of legal questions of ownership and control of assets in an estate is de novo. *See Jenkins v. Am. Express Fin. Corp.*, 721 N.W.2d 286, 289 (Minn. 2006) (reviewing de novo legal questions in DEED case); *In re Beachside I Homeowners Ass’n*, 802 N.W.2d 771, 774 (Minn. App. 2011) (reviewing legal question of ownership in estate de novo).

Ownership

We first address Bracht’s claim that the ULJ erred by determining that she owns 25% of Bracht Bros. Bracht first argues that the ULJ erroneously found that she and her mother, together, own more than 25% of the business, observing that her mother is dead. Although DEED initially made that determination, the ULJ never did. Rather, the ULJ found that Bracht satisfied the statutory ownership requirement because she, independently, owns 25% of the company, based on the 7.75% interest Bracht owned before her mother’s death and the 17.25% interest Bracht subsequently acquired.

When interpreting statutory language, we must “ascertain and effectuate the intention of the legislature.” Minn. Stat. § 645.16 (2010). In doing so, we must apply the plain meaning of words whenever possible. *Id.* If there is ambiguity concerning the

application of those words, the intention of the legislation may be ascertained by considering other “laws upon the same or similar subjects.” *Id.*, subp. (5). To determine whether Bracht “owns” property in her mother’s estate, we look to probate law.

Bracht bases her argument about her lack of ownership on the existence of a will. According to Bracht, she and her siblings are “beneficiaries under [their mother’s] Will.” And that “[a]ccording to the terms of the Will, the residue of [their mother’s] Estate, after payment of debts, claims, taxes, and expenses, is to be divided in equal share [among them].” She claims that in this situation, “It is certainly possible that there will be no remaining residue to divide between the heirs.” She therefore categorizes her interest as a “potential future ownership interest” that “may never exist,” and not ownership.

Bracht’s factual assertions about the existence of a will are not part of the record and, therefore, are not properly before this court on appeal. *McNeilly v. Dep’t of Emp’t & Econ. Dev.*, 778 N.W.2d 707, 709 n.7 (Minn. App. 2010) (observing that affidavits attached to appellate brief were not part of the record before the ULJ and therefore not proper for appellate consideration under Minn. R. Civ. App. P. 110.01 and 115.04, subd. 1). But the result, whether the interest passed through intestate succession or by will, is the same; Bracht became an owner of the additional business interest on the day her mother died. *See* Minn. Stat. § 524.3-101 (2010) (“Upon death, a person’s real and personal property devolves to the persons to whom it is devised by last will . . . or in the absence of testamentary disposition, to the decedent’s heirs, . . . subject to [intestate succession laws].”); *Beachside I*, 802 N.W.2d at 774 (construing an earlier but identical

version of Minn. Stat. § 524.3-101 to “clearly provide for the automatic devolution of interest in property” upon death).

Bracht makes two arguments regarding why this particular will requires this court to reach a conclusion that she does not yet own the property. First, Bracht contends that her interest in the property is uncertain because it is residual. A “residuary devise” is “[a] devise of the remainder of the testator’s property left after other specific devises are taken.” *Black’s Law Dictionary* 518 (9th ed. 2009). And a specific devise is “[a] devise that passes a particular piece of property.” *Id.* Bracht reasons that, if her devise is residual, she cannot own the property until all of the estate debts, claims, taxes, and expenses are paid.

Bracht’s argument would be more persuasive if, for example, her mother had devised the entire company to Bracht’s sister and divided one-fourth share of the residue of her estate to Bracht. In that event, the interest in the company would vest in Bracht’s sister on the day of her mother’s death and would never vest with Bracht. But this case does not involve the specific devise of a particular piece of property; it involves the payment of estate expenses, the type of payments that administrators routinely make. *See* Minn. Stat. § 524.3-814 (stating that the personal representative of an estate may pay the encumbrances of any assets if payment appears to be in the best interests of the estate). While the payment of expenses will undoubtedly lower the value of the residue of the estate to which Bracht is entitled, it does not divest her of her one-fourth share. In other words, while her piece of the pie might be smaller, it is still one-fourth of the pie.

Second, Bracht argues that because, under probate law, she is entitled to disclaim a devise if she does not want it, she cannot “own” the property until she actually accepts title. The power to disclaim an interest in property is embodied in Minn. Stat. § 524.2-1107 (2010), which provides:

(a) A person may disclaim, in whole or in part, any interest in or power over property

. . . .

(c) To be effective, a disclaimer must be in writing, declare the writing as a disclaimer, describe the interest or power disclaimed, and be signed by the person or fiduciary making the disclaimer and acknowledged in the manner provided for deeds of real estate to be recorded in this state. . . .

(d) A partial disclaimer may be expressed as a fraction, percentage, monetary amount, term of years, limitation of a power, or any other interest or estate in the property.

Bracht’s argument lacks merit for two reasons. First, another part of the disclaimer provision observes that the “disclaimed interest is created at the death of the benefactor.” Minn. Stat. § 524.2-1108(d)(1) (2010). Therefore, until the interest is disclaimed, Bracht owns it. Second, the right to disclaim is present in cases of intestate succession, and under *Beachside I*, ownership in those cases still occurs upon death. 802 N.W.2d at 774. If the right to disclaim does not disrupt the vesting of property in intestate-succession cases, it does not disrupt the vesting of property in will cases either.

Control

Bracht argues that the ULJ erred by determining that, aside from ownership, she satisfies the business-owner provision because she indirectly controls 25% of the business under Minn. Stat. § 268.085, subd. 9(a). We agree with Bracht that this

conclusion by the ULJ is inconsistent with the record. Bracht controls the 7.75% that she owned before her mother's death. But as the ULJ observed, the 17.25% interest that she owns from her mother's estate is controlled by the estate's administrators. DEED essentially concedes this point in its brief, arguing that even if the administrators control the estate, Bracht still owns her shares. The ULJ's erroneous conclusion that Bracht controls the estate does not require reversal because Bracht's ownership, by itself, triggers the statute.

Affirmed.