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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1701**

In the Matter of the Edward M. Anderson Trust

**Filed July 8, 2013
Affirmed
Hudson, Judge**

Hennepin County District Court
File Nos. 27-TR-CV-11-66

Galyna Anderson, St. Paul, Minnesota (pro se appellant)

Thaddeus S. Figus, Corporate Legal Advisors, Minneapolis, Minnesota (for respondent)

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

UNPUBLISHED OPINION

HUDSON, Judge

In this appeal from a probate order denying appellant's petition to reform the trust and terminating appellant's right to occupy the homestead property, appellant argues that the district court erred by (1) rejecting her claim that the transfer of homestead property to the trust was procured by fraud or misrepresentation, invalidating the transfer; (2) denying as untimely her claim for an elective share of the homestead under Minn. Stat. § 524.2-402 (2008), because the district court order conveying decedent's non-trust property de facto probated the will, making her claim timely under Minn. Stat. § 524.2-

211(f) (2008); and (3) terminating her right to occupy the homestead property because she committed waste. Because appellant's misrepresentation claim lacks merit, the estate was not de facto probated, and appellant's waste terminated her right to occupy the property under the terms of the trust agreement, we affirm.

FACTS

Decedent Edward Anderson created the Edward M. Anderson Revocable Trust on September 6, 1995. Following his first wife's death in 1998, Edward married appellant Galyna Anderson in 2004. They were married until Edward passed away on March 19, 2009, and they resided at the same homestead throughout their marriage.

In November 2008, Edward executed the third and superseding amendment to the trust agreement establishing a qualified marital trust at his death that provided appellant the net income from the trust as well as a life estate in the homestead. The marital trust was to terminate in the event appellant remarried, died, ceased living in the residence for four consecutive months, or committed waste upon the property. In the event the marital trust was terminated, the property it held was to transfer to Edward's son, Merritt Anderson.

The same day that the third amendment was executed, both Edward and appellant executed a deed transferring the homestead to the trust. Appellant alleges she only executed the deed because Edward told her that she would receive a life estate in the homestead and that he showed her a copy of the third amended trust to assure her of that fact. Two months later, Edward executed a fourth and superseding amendment to the trust terminating the qualified marital trust four years after his death, rather than at

appellant's death, as the third amendment had done. The list of events terminating the marital trust was otherwise unchanged.

In January 2009, Edward executed a written statement ordering disposition of particular personal property, including furnishings, a boat, a snowmobile, tools, fishing gear, guns, and jewelry, to various family members. This corresponded to the provision in his will stating that his personal property should be transferred according to a separate written statement. The written statement did not state the value of the items listed.

After Edward passed away, the qualified marital trust did not produce sufficient income to pay the real estate taxes, insurance, utilities, or maintenance expenses for the homestead property, and appellant made no other arrangements for payment of these expenses. As a result, between March 19, 2009, and August 31, 2011, Merritt Anderson, acting as trustee of the marital trust, used \$30,118 of trust principal to pay these expenses. An additional \$42,292 of marital trust principal was distributed to pay other expenses of appellant.

In May 2011, appellant initiated the present action seeking, among other relief, a life estate in the homestead either through reformation of the trust or through exercise of her statutory right to an elective share of the homestead under Minn. Stat. § 524.2-402(a)(2). In October 2011, Merritt Anderson, in his capacity as beneficiary of the Edward M. Anderson Revocable Trust, filed a motion to terminate the qualified marital trust, alleging that appellant committed waste by failing to pay real estate taxes, homeowners insurance, and utilities.

The matter was tried to the district court in March 2012. The district court first concluded that the fourth trust amendment “was validly executed, was the controlling trust agreement at the time of Edward Anderson’s death, and continues to be the controlling trust agreement for the purposes of this litigation.” The district court ordered distribution of the non-trust personal property according to Edward’s written statement holding that, although the will was never probated, the distribution was proper because the value of the non-trust property was nominal. The district court also concluded that appellant had committed waste by failing to pay real estate taxes, utilities, insurance, and maintenance on the homestead property, thereby terminating the qualified marital trust and appellant’s right to occupy the homestead. Finally, the district court held that appellant could not assert any statutory rights in the homestead because she had consented in writing to transferring the homestead into the trust, waiving her statutory homestead rights under Minn. Stat. § 524.2-402(a), and that, regardless of whether she consented to the transfer, her claim was time-barred under Minn. Stat. § 524.2-211(f)(2).

Appellant filed a timely motion for reconsideration arguing, in part, that the transfer of the homestead to the trust was invalid because it was procured through fraud and misrepresentation and that the district court order effectively probated the estate by distributing Edward’s personal property, permitting her to make a timely claim for her elective share of the homestead pursuant to Minn. Stat. § 524.2-211(f)(1). Following a hearing, the district court affirmed its original order, finding that the evidence did not support appellant’s argument that the transfer of the homestead to the trust was procured through fraud or misrepresentation. The district court also rejected appellant’s argument

that the distribution of property pursuant to Edward's written statement effectively probated the will. Finally, the district court reiterated its conclusion that appellant committed waste by failing to pay for various homestead expenses, terminating the qualified marital trust and appellant's right to occupy the homestead. This appeal follows.

D E C I S I O N

In each of its determinations, the district court “predicate[d] conclusions of law upon a variety of findings, presenting mixed questions of law and fact.” *In re Estate of Whish v. Bienfang*, 622 N.W.2d 847, 849 (Minn. App. 2001). When reviewing mixed questions of law and fact, we will not set aside the district court's factual findings unless they are clearly erroneous, but “are not bound by and need not give deference to the district court's decision on a purely legal issue. When reviewing mixed questions of law and fact, we correct erroneous applications of law, but accord the [district] court discretion in its ultimate conclusions and review such conclusions under an abuse of discretion standard.” *Porch v. Gen. Motors Acceptance Corp.*, 642 N.W.2d 473, 477 (Minn. App. 2002) (quotations and citations omitted), *review denied* (Minn. June 26, 2002).

Fraudulent transfer of the homestead to the trust

Appellant first argues that decedent induced her to transfer her interest in the homestead property through misrepresentation, thereby invalidating the property's transfer into the trust and subjecting it to probate. As a result, appellant argues, the assertion of her right to a life estate in the homestead was timely under Minn. Stat.

§ 524.2-211(f)(1). Minn. Stat. § 524.2-402(a)(2) provides that “[i]f there is a surviving spouse, the homestead . . . descends free from any testamentary or other disposition of it to which the spouse has not consented in writing . . . to the spouse for the term of the spouse’s natural life and the remainder in equal shares to the decedent’s descendants by representation.” When the homestead is subject to a testamentary disposition, a spouse asserting her statutory right to the homestead must file a petition “within nine months after the date of death, or *within six months after the probate of the decedent’s will*, whichever limitation last expires.” Minn. Stat. § 524.2-211(f)(1) (emphasis added). However “where the homestead is subject to other disposition, the filing must be within nine months after the date of death.” Minn. Stat. § 524.2-211(f)(2). Appellant acknowledges that, if the homestead is subject to disposition by the trust instrument, under section 524.2-211(f)(2), her homestead election was not timely because it was not made within nine months after the date of death. But appellant argues that, because the transfer of the homestead to the trust was invalid due to Edward’s misrepresentation that appellant would receive a life estate in the homestead, the homestead must be probated, allowing her to make a timely election of her homestead share under Minn. Stat. § 524.2-211(f)(1).

Appellant’s argument fails for three reasons. First, she cannot show detrimental reliance on any misrepresentation, a required element of a claim of intentional misrepresentation. *See Ag Servs. of Am., Inc. v. Schroeder*, 693 N.W.2d 227, 235 (Minn. App. 2005). Appellant’s reliance on Edward’s representation that she would receive a life estate under the third amended trust agreement was not detrimental, because her

interest in the property would have been terminated under either the third or fourth amended trust agreement when she committed waste. Second, appellant's argument is time-barred. A surviving spouse "is deemed to consent to any testamentary or other disposition of the homestead to which the spouse has not previously consented in writing" unless the spouse files a petition asserting her homestead rights within nine months of the date of death where, as here, the homestead is subject to a non-testamentary disposition. Minn. Stat. §§ 524.2-211(f)(2), -402(d). Appellant did not file her petition asserting her statutory rights to the homestead within nine months of Edward's date of death, so she is deemed to have consented to the non-testamentary disposition, regardless of whether her written consent to the transfer was valid. On this record, we conclude that the district court's finding that the evidence was insufficient to support appellant's misrepresentation claim was not clearly erroneous.

De facto probate of the estate

Appellant next argues that, by ordering Edward's non-trust personal property to be distributed according to his written statement, the district court de facto probated decedent's will, permitting her to assert a timely claim to the homestead under Minn. Stat. § 524.2-211(f)(1).

Personal property may be distributed without initiating a probate proceeding if the probate estate is worth less than \$20,000. Minn. Stat. § 524.3-1201(a)(1) (2008). The district court concluded that, while most of the personal property listed on the written statement was not owned by the trust, the property could be distributed without instituting probate proceedings. This was not an abuse of discretion. The written statement did not

state the value of the items, nor did appellant provide any evidence of the value of those items. While the items may have been worth over \$20,000, the list of items itself is not conclusive of that fact. Therefore, absent any evidence to the contrary, the district court's conclusion that the estate was small enough to be distributed without instituting probate proceedings was not clearly erroneous.

Commission of waste

Appellant argues that the district court erred by holding that she committed waste. "Waste is conduct by a person in possession of land which is actionable by another with an interest in that same land to protect the reasonable expectations of the nonpossessing party." *Rudnitski v. Seely*, 452 N.W.2d 664, 666 (Minn. 1990). Waste "involves negligence or intentional conduct which results in material damage to the property." *Id.* Failure to pay property taxes constitutes waste. *Beliveau v. Beliveau*, 217 Minn. 235, 242, 14 N.W.2d 360, 364 (1944).

Appellant argues that because she was only granted a four-year estate, she had the legal status of a tenant, and tenants are not typically liable for expenses such as taxes and insurance. This argument lacks merit because both the third and fourth amended trust agreements required her to pay those expenses.

Appellant next argues that she had no notice that she was committing waste, but appellant was in possession of the trust agreement months after Edward's death, yet made no property tax or homeowners insurance payments throughout her tenancy. The trustee sent appellant multiple letters informing her of her obligation to make tax and insurance

payments. The district court therefore did not abuse its discretion by holding that appellant had notice that she was committing waste upon the property.

Finally, appellant argues that to avoid an unfair result, we should reject the district court's finding of waste and award her the life estate value of the homestead. Appellant lived in the homestead for three years without paying taxes or insurance, despite her obligation to make those payments under the terms of the trust. The district court order honors the intent of the grantor and protects the remainder interest of the trust beneficiary that might otherwise be squandered.

Affirmed.