STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1408

In re the Estate of:
William F. Krebes, Decedent.

Filed March 26, 2012
Affirmed in part and reversed in part
Toussaint, Judge[*]

Dakota County District Court
File Nos. 19HA-PR-10-381, 19HA-PR-10-380, 19HA-PR-09-673

Richard G. Mark, Brooke C. Swenson, W. Knapp Fitzsimmons, Briggs and Morgan, P.A., Minneapolis, Minnesota (for appellant Lynn Krebes-Lufkin, personal representative of estate)

Luther M. Amundson, Susan A. King, Maser, Amundson & Price, P.A., Minneapolis, Minnesota (for respondent Helen Durand)

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

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

TOUSSAINT, Judge

Appellant Lynn Krebes-Lufkin challenges the Dakota County probate court (Dakota County) order denying her objection to, and requested dismissal of, a petition for spousal-share election filed by respondent Alternate Decision Makers, Inc., the appointed conservator of the deceased's surviving spouse. Appellant argues that the court erred by

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

concluding that appellant was not entitled to notice of the Hennepin County elective-share proceeding or an opportunity to be heard in that proceeding. We affirm in part and reverse in part.

FACTS

Appellant's father, William F. Krebes, died on October 12, 2009. Appellant was appointed as personal representative of Krebes's estate in Dakota County on October 30, 2009. The Hennepin County probate court (Hennepin County) appointed respondent as conservator of Krebes's surviving spouse, Helen Durand, and on November 12, 2010, respondent filed a petition in Hennepin County seeking authorization to file for an elective share of Krebes's estate. That same day, Hennepin County issued an order authorizing respondent to file for an elective share of Krebes's estate. Hennepin County found that the "[e]xercise of the right of election is necessary to provide adequate support for the protected person during the protected person's probable life expectancy, as per Minn. Stat. § 524.2-212" and "[t]he election will be consistent with the best interests of the natural bounty of the protected person's affection, as per Minn. Stat. § 524.2-212."

Also on November 12, 2010, respondent filed a petition in Dakota County seeking an elective share of Krebes's estate, among other claims. On May 31, 2011, appellant filed an objection to, and a motion to dismiss, respondent's elective-share petition in Dakota County. Appellant contended that she had not received notice of, or an opportunity to be heard in, the Hennepin County proceeding. Appellant argued the merits of, and urged Dakota County to make findings and conclusions regarding, whether

Durand's life expectancy and available assets disqualify her from exercising her elective-share rights under Minnesota's version of the Uniform Probate Code (UPC).

In a July 15, 2011 order, Dakota County denied appellant's objection and motion to dismiss. In doing so, it held that Hennepin County was the proper forum for the elective-share-authorization petition and that, because appellant did not appeal or move to amend Hennepin County's November 12 order, appellant is bound by that final order. Dakota County also concluded that appellant was not entitled to notice of respondent's November 12 elective-share-authorization petition because she is not an "interested party," and observed that Hennepin County made "the required findings and duly issued its order authorizing the exercise of Helen Durand's right to elective share." This appeal followed.

D E C I S I O N

I.

In a civil case, challenges to a final order generally amount to an improper collateral attack on a prior ruling. *See Dieseth v. Calder Mfg. Co.*, 275 Minn. 365, 370-71, 147 N.W.2d 100, 103 (1966) (stating that an appealable order is final after the time for appeal has expired even if the order is incorrect); *Nussbaumer v. Fetrow*, 556 N.W.2d 595, 599 (Minn. App. 1996) (stating that Minnesota law does not permit collateral attack on facially valid judgments, judgments alleged to be merely erroneous are "not subject to attack," and public policy favors the finality of judgments), *review denied* (Minn. Feb. 26, 1997). This rule applies to a probate court's orders. *Bengtson v. Setterberg*, 227 Minn. 337, 349, 35 N.W.2d 623, 629 (1949); *see, e.g.*, *Kelly v. Kelly*, 304 Minn. 237, 229

N.W.2d 526 (1975) (barring collateral attack on probate court order approving guardian's transfer of title to property). A collateral attack includes "every proceeding in which the integrity of the judgment is challenged" in a separate action "*except suits brought to obtain decrees declaring judgment to be void ab initio*." *In re Wretlind*, 225 Minn. 554, 564, 32 N.W.2d 161, 168 (1948) (quotations omitted); *see Black's Law Dictionary* 298 (9th ed. 2009) (defining a "collateral attack" as "[a]n attack on a judgment in a proceeding other than a direct appeal; [especially], an attempt to undermine a judgment through a judicial proceeding in which the ground of the proceeding (or a defense in the proceeding) is that the judgment is ineffective").

Appellant argues that her challenge is not a collateral attack on a final order, and disputes whether the November 12 order was appealable. The Minnesota Rules of Civil Appellate Procedure provide that an appeal may be taken from an appealable order within 60 days after a party serves written notice of its filing, "[*u*]*nless a different time is provided by statute*." Minn. R. Civ. App. P. 104.01 (emphasis added). Under Minnesota's UPC, an appeal may be taken "by any person aggrieved after service by any party of written notice of the filing of the order . . . or if no written notice is served, within six months after the filing of the order." Minn. Stat. § 525.712 (2010). Here, Dakota County found that Hennepin County's order was appealable under the procedures provided in Minnesota's UPC, and we agree. *See* Minn. Stat. § 525.71(a)(5) (2010) (providing that appeals may be taken under Minnesota's UPC from "an order permitting, or refusing to permit, the filing of a claim . . . when the amount in controversy exceeds $100"); *see also* Minn. Stat. §§ 524.1-201(8) (providing that a claim includes "liabilities

of the estate which arise after the death of the decedent"), .5-102, subd. 2 (providing that, "with respect to a protected person, [a claim] includes . . . a claim against an estate which arises at or after the appointment of a conservator") (2010). Because the record establishes that appellant did not file an appeal within six months after the filing of the November 12 order, that order is final and cannot be collaterally attacked, even if it is erroneous.

Appellant alternatively argues that the November 12 order merely authorized respondent to file an elective-share petition in Dakota County and that Dakota County has the authority and responsibility to reach new factual determinations and legal conclusions as to whether Durand meets the statutory criteria required to exercise her elective-share right. Dakota County found that Hennepin County made "the required findings and duly issued its order authorizing the exercise of Durand's right to elective share" and that the only issue for Dakota County "is to determine the amount of the elective share." We observe that Hennepin County did not make the required findings; indeed, the November 12 order contains no findings as to Durand's life expectancy or available assets. But notwithstanding these insufficient factual determinations, the November 12 order is final and not subject to collateral attack. *See Dieseth*, 275 Minn. at 370-71, 147 N.W.2d at 103 (stating that an appealable order is final after the time for appeal has expired even if the order is incorrect).

In sum, Dakota County did not err by concluding that the Hennepin County order is a final order that is not subject to collateral attack, and appellant is not entitled to relief on this ground. Accordingly, the November 12 order has been made part of this record,

and we decline to address additional arguments in appellant's brief that substantively challenge Hennepin County's order because those issues are not properly before us.

II.

Appellant also argues that Dakota County erred by concluding that she was not entitled to notice of the elective-share proceeding in Hennepin County or an opportunity to be heard in that proceeding. Analysis of probate issues is governed by relevant sections of Minnesota's UPC. We interpret the Minnesota UPC provisions liberally, in a manner that simplifies and clarifies the law concerning the affairs of decedents, makes effective the intent of a decedent in distribution of property, and to promote the speedy and efficient liquidation of a decedent's estate and distribution to successors. Minn. Stat. § 524.1-102 (2010). Statutory construction is a question of law, which we review de novo. *Brookfield Trade Ctr., Inc. v. Cnty. of Ramsey*, 584 N.W.2d 390, 393 (Minn. 1998). Application of a statute to the undisputed facts of a case involves a question of law, and the district court's decision is not binding on this court. *O'Malley v. Ulland Bros.*, 549 N.W.2d 889, 892 (Minn. 1996).

Minnesota law provides that a conservator may, among other things, "exercise any right to exempt property and an elective share in the estate of the protected person's deceased spouse." Minn. Stat. § 524.5-411(a)(6) (2010). Generally, "[n]otice of the hearing on a petition for an order after appointment of a conservator . . . shall be given to interested persons." Minn. Stat. § 524.5-404(c) (2010). The record reflects, and respondent does not dispute, that appellant was not given notice of respondent's elective-share-authorization petition and Hennepin County did not conduct a hearing on that

petition. But Dakota County concluded that appellant "is not an interested party in the Conservatorship of Helen Durand as defined by statute and hence [appellant] was not entitled to notice." Dakota County did not identify what statutory definition it relied on in making that finding.

Appellant argues that Dakota County erred by concluding that she is not an "interested person."[1] Under Minnesota's UPC, the general definition of "interested person" broadly encompasses persons with an interest in the estate of the decedent, including "heirs, devisees, children, spouses, creditors, beneficiaries and any others having a property right in or claim against the estate of a decedent." Minn. Stat. § 524.1-201(32) (2010). This general definition applies "[s]ubject to additional definitions contained in the subsequent articles . . . and unless the context otherwise requires." Minn. Stat. § 524.1-201 (2010). Because the sections of Minnesota's UPC relating to the elective share of a surviving spouse do not contain an alternative definition of "interested person," we conclude that the broad general definition of "interested person" applies in the circumstances presented here. And appellant, who is the daughter of the decedent and a personal representative of the decedent's estate, qualifies as an "interested person" under that definition. Accordingly, appellant was entitled to notice of the elective-share proceeding in Hennepin County because she is an "interested person."

[1] Although Dakota County uses the term "interested party," Minnesota's UPC uses "interested person."

Appellant also argues that she qualifies as an "affected person," who is entitled to notice under the sections of Minnesota's UPC relating to protected persons.[2] Section 524.5-411 of Minnesota's UPC permits a conservator to exempt an elective share in a deceased's estate "[a]fter notice to *affected persons* as provided in this section, and after *hearing*." Minn. Stat. § 524.5-411(a) (2010) (emphasis added). Section 524.5-411 contains the following specific notice requirement:

> Notice of any hearing pursuant to this section shall not be given pursuant to section 524.5-113 [providing for notice to "interested persons"]. Notice of any hearing under this section shall be given to all *affected persons*, in plain language, and shall provide the time and place of the hearing and be given by mail postmarked at least 14 days before the hearing. Proof of notice must be made before or at the hearing and filed in the proceeding.

Minn. Stat. § 524.5-411(b) (2010) (emphasis added). Section 524.5-411 defines "affected persons" to include "any person who has a beneficial vested or contingent interest that may be affected by the exercise of the power under [section 524.5-411]." *Id.*, (b)(2). Accordingly, even if we were to apply the narrower meaning of "interested person" as defined in the sections of Minnesota's UPC relating to protected persons,[3] appellant was entitled to notice of the elective-share proceeding in Hennepin County and an opportunity to be heard because she is an "affected person."

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[2] The record reflects, and appellant acknowledged at oral argument, that this argument was not presented to the district court. We nonetheless choose to address this question as a matter of law.

[3] In the context of protected persons, the definition of "interested person" is generally limited to persons with a specific connection to the protected person rather than a connection to the estate. *See* Minn. Stat. § 524.5-102, subd. 7 (2010).

Appellant contends that, due to her lack of notice, the November 12 order is void because Hennepin County lacked personal jurisdiction over her. The United States and Minnesota constitutions prohibit the government from depriving individuals of life, liberty, or property without due process of law. U.S. Const. amend. XIV; Minn. Const. art. I, § 7. Due process guarantees reasonable notice and an opportunity to be heard at a meaningful time and in a meaningful manner before a fair tribunal. *Nexus v. Swift*, 785 N.W.2d 771, 779 (Minn. App. 2010). And notice is a prerequisite for a district court to exercise personal jurisdiction and to render a decision binding as to that party; therefore, "any judgment rendered without proper notice is absolutely void, not merely irregular or erroneous." *Matter of Bowers*, 456 N.W.2d 734, 737 (Minn. App. 1990); *accord Beede v. Nides Fin. Corp.*, 209 Minn. 354, 355-56, 296 N.W. 413, 414 (1941). Orders of a probate court may not be collaterally attacked in district court "except where the probate court lacked jurisdiction and that lack of jurisdiction appears affirmatively on the face of the record." *Burma v. Stransky*, 357 N.W.2d 82, 86 (Minn. 1984) (citing *Jasperson v. Jacobson*, 224 Minn. 76, 85, 27 N.W.2d 788, 794 (1947)).

In *Jasperson*, the Minnesota Supreme Court concluded that the failure to serve proper notice, as required by statute, constituted a jurisdictional defect on the face of the record. *Jasperson*, 224 Minn. at 85, 27 N.W.2d at 794. *Jasperson* involved a guardianship proceeding in which notice was not properly served on the prospective ward. *Id.* at 80, 27 N.W.2d at 791. The *Jasperson* court concluded that a probate court must acquire personal jurisdiction over a prospective ward in order to adjudicate that person's status as an incompetent person. *Id.* at 81-83, 27 N.W.2d at 792-93 (concluding

that a proceeding for the appointment of a guardian is "*in personam*" and involves "personal rights" (quotation omitted)). Because the probate court had not acquired personal jurisdiction over the prospective ward, the jurisdictionally defective order was void. *Id.* at 85, 27 N.W.2d at 794.

The issue in *Burma* was whether the lack of notice to the nearest kindred of the prospective ward, as required by statute, similarly constitutes a jurisdictional defect. *Burma*, 357 N.W.2d at 87. In *Burma*, the Minnesota Supreme Court distinguished *Jasperson* and concluded that the lack of notice to the nearest kindred of a prospective ward, though erroneous, is not a jurisdictional defect. *Id.* The *Burma* court reasoned that "[t]he *essential* notice required by the statute is to the proposed ward . . . . The interest of the proposed ward in the guardianship hearing is direct and personal, while the interest of kindred is indirect and more impersonal." *Id.* (emphasis added).

This case is more similar to the circumstances in *Burma* than in *Jasperson*. The Hennepin County proceedings involved the rights and obligations of Durand, and therefore personal jurisdiction over her was essential; but appellant's interest in the outcome of the Hennepin County proceedings was indirect and impersonal. The lack of notice to appellant, while erroneous, was not a jurisdictional defect rendering the November 12 order void.[4] Accordingly, we reverse Dakota County's erroneous

[4] Appellant nonetheless argues that the November 12 order cannot "bind" her because she was denied notice and an opportunity to be heard in the Hennepin County proceeding. But the November 12 order does not purport to bind appellant to anything. Rather, that proceeding determined the rights and obligations of Durand; namely, that she has the right, through her conservator, to petition for an elective share of Krebes's estate.

conclusion that appellant was not entitled to notice of the elective share proceeding in Hennepin County. However, because the November 12 order is final, Dakota County's error does not affect our ultimate conclusion that the November 12 order cannot be collaterally attacked based on a nonjurisdictional error.

Affirmed in part and reversed in part.

Accordingly, appellant is not "bound" by the November 12 order because that order does not involve the rights or obligations of appellant.