

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1550**

In re the Estate of: Erna M. Wingen, Deceased

**Filed June 10, 2013
Affirmed
Rodenberg, Judge**

Blue Earth County District Court
File No. 07-PR-07-2623

Keith L. Deike, Patton, Hoversten & Berg, P.A., Waseca, Minnesota (for appellant Francis E. Wingen)

Scott V. Kelly, Farrish Johnson Law Office, Chtd., Mankato, Minnesota (for respondent Kathryn Stencil)

Considered and decided by Halbrooks, Presiding Judge; Larkin, Judge; and Rodenberg, Judge.

UNPUBLISHED OPINION

RODENBERG, Judge

In this appeal from a district court order in probate proceedings, appellant challenges the district court's adoption of the county taxing authority's estimated market value as the fair market value of certain real property. We affirm.

FACTS

This is the second appeal to this court arising from a dispute over the administration of the estate of decedent Erna M. Wingen.¹ Respondent Kathryn S. Stencel, decedent's daughter, is the personal representative designated in the will. Appellant Francis E. Wingen is the other surviving devisee under the will.

In August 2010, respondent filed a statement to close the estate. *See generally* Minn. Stat. § 524.3-1003 (2012) (authorizing personal representatives to close an unsupervised estate using such a statement). Appellant objected to the statement to close and brought a petition alleging that the estate had not been equally distributed and seeking equalization of the distribution. *See generally* Minn. Stat. § 524.3-1001(a)(1) (2012) (authorizing such petitions).

The matter was set for trial. At a pretrial hearing, the parties resolved all issues except the valuation of two tracts of real estate. Both tracts are located in Blue Earth

¹ Two of decedent's four children filed objections to a petition by their sister, respondent here, to probate the will (which disinherited those two children) and have herself appointed personal representative. The district court denied the objections. The disinherited children appealed and this court determined that they were entitled to conduct discovery before a ruling on the petition to probate the will. *In re Estate of Wingen*, No. A08-0944, 2009 WL 1586876, at *3 (Minn. App. June 9, 2009). Accordingly, this court "reverse[d] the order probating the will, and remand[ed] for further proceedings." *Id.* at *3-4. The objections of the disinherited children were later withdrawn or resolved, but the nature of the resolution is not disclosed in the record. The court file does not contain a subsequent order probating the will or appointing a personal representative. Our ability to address the present dispute is not affected by these other issues that have been neither raised nor briefed in this appeal. *See* Minn. Stat. § 524.1-302(b) (providing the district court with broad jurisdiction to address matters affecting an estate), .03-107 (providing that each proceeding before the probate court "is independent of any other proceeding affecting the same estate") (2012). The district court may need to issue additional orders after resolution of the present appeal in order to close the estate.

County. The first tract is a 109.33-acre lot on Lura Lake and the second is an 80-acre farm parcel.

In her February 24, 2011 final account for the estate, respondent valued the Lura Lake property at \$382,300 and the 80-acre lot at \$237,400. This valuation was the estimated market value ascribed to the lots by the Blue Earth County tax assessor in 2007. The estate, by agreement of the parties, used these values when filing its estate tax return with the Internal Revenue Service (IRS). The IRS accepted the use of the county assessor's estimated market value for both parcels.

Before trial, appellant obtained an appraisal from Hoysler Associates Inc. and respondent obtained an appraisal from Appraisal Services of Mankato Inc. Both estimated the fair market value of the parcels to be higher than the county assessor's estimated market value. However, appellant's appraisal estimated the value of the parcels as of October 2008, and the parties agree that the proper valuation date was July 7, 2007, decedent's date of death. At trial, the parties stipulated that the values recited in the appellant's appraisal should properly be reduced by 5% to account for the use of the wrong valuation date. Additionally, the parties agreed that respondent's appraisal used an incorrect acreage for the Lura Lake parcel.

At trial, the two appraisals and the county assessor's estimated market value were received in evidence by stipulation. No other estimates of the value of the two tracts of land were offered. The district court found that the fair market value of the two parcels was equal to the county's estimated market value for the properties. This appeal followed.

DECISION

Appellant argues that the district court erroneously used the county assessor's estimated market value to determine the value of the two parcels "as opposed to the fair market value of such real estate at the date of . . . death."

A district court's findings of fact in a probate proceeding are reviewed for clear error. *In re Estate of Simpkins*, 446 N.W.2d 188, 190 (Minn. App. 1989); Minn. R. Civ. P. 52.01. In conducting this review, we "view the record in the light most favorable to the judgment of the district court" and will not reverse the findings unless they are "manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *Rogers v. Moore*, 603 N.W.2d 650, 656 (Minn. 1999). We will determine that a finding of fact is clearly erroneous if it leaves us "with the definite and firm conviction that a mistake has been made." *Fletcher v. Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999). We review questions of law in probate proceedings de novo. *In re Estate of Janacek*, 610 N.W.2d 638, 641 (Minn. 2000).

The fair market value of property is a question of fact. *Hertz v. Hertz*, 304 Minn. 144, 145, 229 N.W.2d 42, 44 (1975). However, the district court stated its determination of the market value of the two tracts of real property in the form of a conclusion of law.²

² The district court enumerated among its "conclusions of law" that respondent "received the Lura Lake property which consisted of 109.33 acres of land adjacent to Lura Lake; said property had a value of \$382,300," that appellant "received 80 acres of farm land from the estate; said property had a value of \$237,400," and that "[t]o equalize the land distributions, [respondent] distributed \$140,000 of . . . bank stock to [appellant]." The district court also addressed whether the parties had met various burdens of proof in light of the agreements reached by the parties. As the existence or nonexistence of these agreements is not relevant to the factual issue the parties placed before the district court, these findings were unnecessary to the district court's decision.

This court is not bound by the district court's characterization of a judicial statement as a "finding of fact" or a "conclusion of law." *Dailey v. Chermak*, 709 N.W.2d 626, 631 (Minn. App. 2006), *review denied* (Minn. May 16, 2006). Instead, the nature of the statement determines its status. A factual finding, "although expressed as a conclusion of law, will be treated on appeal as a finding of fact." *Bissell v. Bissell*, 291 Minn. 348, 352 n.1, 191 N.W.2d 425, 427 n.1 (1971); *see also Cushing v. Cable*, 54 Minn. 6, 8, 55 N.W. 736, 737 (1893) (noting that "[t]he findings are not in commendable form," and "tak[ing] as a finding of fact" a statement "expressed as a conclusion of law"). The district court's determination of the fair market value of the two tracts of real property is a finding of fact subject to clear-error review.

As a question of fact, the fair market value of real property may be established by any competent evidence. *Ramsey Cnty. v. Miller*, 316 N.W.2d 917, 919 (Minn. 1982). Specifically, "the assessed valuation of the property as shown in the county [assessor's] records [is] admissible as bearing upon the fair market value of the property." *Id.* at 922. In valuing property, the county assessor is required to "value each article or description of property by itself, and at such sum or price as the assessor believes the same to be fairly worth in money." Minn. Stat. § 273.11, subd. 1 (2012). For tax purposes, market value is "the price for which property would sell upon the market at [a] private sale." *Equitable Life Assurance Soc'y of the United States v. Cnty. of Ramsey*, 530 N.W.2d 544, 555 (Minn. 1995) (quotation omitted). It "is the compensation which a willing purchaser not required to buy the property would pay to an owner willing but not required to sell it, taking into consideration the highest and best use of the property." *Am. Express Fin.*

Advisors, Inc. v. Cnty. of Carver, 573 N.W.2d 651, 659 (Minn. 1998). The county assessor is expressly forbidden from “adopt[ing] a lower or different standard of value because the same is to serve as a basis of taxation.” Minn. Stat. § 273.11, subd. 1.

Despite appellant’s arguments to the contrary, the county assessor’s estimated market value for the two parcels was competent evidence of their fair market value. The district court, presented with three appraisals, adopted one of them as the fair market value of the parcels. The record supports the district court’s reasoning in rejecting the commissioned appraisals. Appellant’s appraisal did not value the properties on the date of the decedent’s death. Respondent’s appraisal used an incorrect acreage for one of the lots. Thus, each of these two appraisals was flawed in some respect. The county assessor’s estimated market value was not attacked as flawed, was used by the parties in preparing the estate tax return, and was accepted by the IRS.

The supreme court has observed that real estate appraisal “is at best an imprecise art,” and a district court asked to determine the value of real estate “brings its own expertise and judgment to the hearing, and its valuation need not be the same as that of any particular expert as long as it is within permissible limits and has meaningful and adequate evidentiary support.” *Montgomery Ward & Co. v. Cnty. of Hennepin*, 482 N.W.2d 785, 791 (Minn. 1992). When viewed in the light most favorable to it, the district court’s finding of fair market value had meaningful and adequate evidentiary support and was not clearly erroneous.

Affirmed.