STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2123
A13-0357

In re: Estate of Harriet Dorothy Meyers, Decedent.

Filed July 1, 2013
Affirmed in part and reversed in part
Huspeni, Judge[*]

Ramsey County District Court
File No. 62-PR-10-758

Teresa K. Patton, The Patton Law Office, P.A., St. Paul, Minnesota; and

John D. Hagen, Jr., Minneapolis, Minnesota (for appellant Judith Gaede)

John C. Lillie, III, Dudley and Smith, P.A., St. Paul, Minnesota (for respondent John Sattler)

Considered and decided by Cleary, Presiding Judge; Hooten, Judge; and Huspeni, Judge.

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

HUSPENI, Judge

Appellant challenges the summary judgment dismissal of her objections to her mother's purported will, to the appointment of respondent as personal representative for her mother's estate, and to the imposition of sanctions under Minn. R. Civ. P. 11.03, arguing that the district court erred by (1) denying a continuance for further discovery;

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

(2) finding no genuine issues of material fact with respect to undue influence; (3) failing to vacate the judgment under Minn. R. Civ. P. 60.02; and (4) abusing its discretion in awarding sanctions. We affirm in part and reverse in part.

FACTS

Decedent Harriet Meyers died in 2010 at the age of 94. She was survived by her daughter, appellant Judith Gaede, and six adult grandchildren. Two of the grandchildren are appellant's sons: Michael Taylor and Jeffrey Taylor. Four of the grandchildren are children of Harriet's predeceased son: respondent John Sattler, and his sisters, Susan Sattler, Sandra Sattler, and Kathleen Sattler Andrede.

Appellant has lived in Arizona for most of her adult life. Harriet lived in Minnesota, as do the Sattlers. During the last five years of her life, Harriet often stayed with appellant in Arizona during the winter. When Harriet was not in Arizona, she paid rent to live with her granddaughter, Susan Sattler, in St. Paul. Susan was also listed on Harriet's bank account and wrote checks for Harriet to pay for certain expenses.

In February 2008, while Harriet was in Arizona with appellant, she executed a will and revocable trust (the 2008 will). The will left most of Harriet's assets to the trust. Harriet's assets predominantly consisted of her half ownership interest in a cabin in Balsam Lake, Wisconsin, which she owned with her sister's heirs. The trust named appellant as the successor trustee and required distributions of the trust assets to appellant and four grandchildren: Susan Sattler, Sandra Sattler, Jeffrey Taylor, and Michael Taylor. The trust instrument did not specify how to allocate the assets; allocation was left to appellant.

In the spring of 2008, Harriet suffered a stroke while in Arizona. As a result, she remained in Arizona throughout most of the summer of 2008, receiving medical care and later recovering in a rehabilitation facility and at appellant's home. In August 2008, after Harriet informed appellant that she wanted to spend time at the Balsam Lake cabin, appellant brought her back to Minnesota and left her with the Sattlers. Toward the end of that summer, Harriet broke her hip while at the cabin with the Sattlers. Because of her broken hip, Harriet remained in Minnesota for the winter of 2008-2009, rather than spending that time in Arizona.

In October 2008, Harriet called a family meeting with the Sattlers to discuss the 2008 will. According to Susan, Harriet was upset because she did not know what was in the 2008 will and did not have a copy of it. The Sattlers tried to obtain a copy of the 2008 will from the attorney in Arizona, but, according to Susan, the attorney declined to send it without appellant's permission. At some point later, Harriet and appellant quit speaking for a period of time. Harriet and the Sattlers eventually received a copy of the 2008 will in January 2009.

Shortly after Harriet received a copy of the 2008 will, she held another family meeting. There, Harriet requested that the Sattlers help her change the 2008 will because, according to Susan, Harriet believed that appellant had deceived her in inducing her to sign it. Respondent contacted attorneys to prepare a new will, which Harriet executed on April 7, 2009 (the 2009 will). The 2009 will distributed Harriet's assets among the Sattlers as follows: 50% to Susan Sattler; 18% to respondent; 16% to Sandra Sattler; and

16% to Kathleen Andrede. The 2009 will made no bequests to appellant or appellant's sons.

The following winter, Harriet returned to Arizona, stayed with appellant until April 2010, and did not inform appellant of the 2009 will during that time. After Harriet returned to Minnesota, she suffered a second stroke, and passed away in September 2010.

In October 2010, the district court issued a statement of informal probate of the 2008 will and named appellant as personal representative of Harriet's estate in an informal proceeding. Later that month, respondent filed a petition for formal probate of the 2009 will and for formal appointment of himself as personal representative of Harriet's estate. Appellant objected to the 2009 will on the basis of lack of testamentary capacity, undue influence, fraud, duress, or mistake. The district court initially set trial for March 2011. Throughout the litigation, however, the district court granted multiple continuances, mostly at the request of appellant's counsel. Two different attorneys for appellant withdrew from the case. Appellant's current attorney filed a notice of appearance on behalf of appellant on February 24, 2012.

After filing her notice of appearance, appellant's current attorney deposed three of the four Sattler grandchildren, and requested that two of the depositions be left open pending production of financial records. Appellant was also deposed during that time.

In July 2012, appellant's current attorney exchanged e-mails with the attorney representing the estate, who informed her that he would be seeking summary judgment at a hearing scheduled for August 21, 2012. In the e-mail, the attorney for the estate also stated that he was "fine communicating by email" pursuant to a request by appellant's

attorney to do so, as she did not visit her office on a daily basis. On July 20, 2012, the attorney for the estate served summary judgment and rule 11 motions at the office address of appellant's attorney, who claims that she did not learn of the motion until July 27, 2012, because she was not notified via e-mail. In a letter to the district court dated July 27, 2012, appellant's attorney explained that she planned to be in Nepal during the month of August and requested that the district court postpone the summary judgment motion. Although there is no record of a written response to this letter, appellant's attorney asserts that the district court judge's clerk called her on July 30 "stating that the judge had instructed her that the hearing needed to be continued." She claims that she relied on this statement and went on a pre-scheduled service trip to Nepal on August 2, 2012, without taking any further steps to ensure that a continuance had been granted.

The district court judge did not grant a continuance, and the summary judgment hearing took place before a referee on August 21, 2012. Appellant's attorney did not respond to the motion for summary judgment and did not appear at the hearing. The referee granted summary judgment in favor of respondent but allowed appellant's attorney the opportunity to file a motion for reconsideration by September 6, 2012, to be heard at the motion for rule 11 sanctions, which was scheduled for September 11, 2012.

On September 6, 2012, appellant's attorney attempted to fax-file a document entitled "Judith Gaede's Memorandum of Law," which stated that it was in opposition to respondent's summary judgment motion "and for other procedural and substantive purposes." The memorandum arrived via fax-file on September 7, 2012. The district court declined to consider the memorandum because it was not a timely response to the

summary judgment motion and was not a motion for reconsideration as instructed in the summary judgment order.

On September 10, 2012, appellant's attorney wrote to the district court requesting that appellant be allowed to continue in the proceedings using the "analogous" standards related to vacating final judgments under Minn. R. Civ. P. 60.02. The following day, the district court heard respondent's motion for sanctions. Appellant's attorney appeared at the hearing and argued in opposition to summary judgment, rather than arguing in opposition to rule 11 sanctions.

On September 24, 2012, the district court issued an order and memorandum explaining that appellant's memorandum of law and attached exhibits were not in the record because they were untimely and did not constitute a motion for reconsideration as instructed by the prior summary judgment order. The district court also granted respondent's motion for rule 11 sanctions, awarding attorney fees, expenses, costs, and disbursements related to the litigation because appellant's allegations lacked evidentiary support and because the claims and contentions were improper and needlessly increased the cost of litigation. The district court also stated that the matter was concluded and canceled the trial. This appeal follows.

D E C I S I O N

I.

Appellant argues that the district court erred by declining to grant her a continuance prior to the August 21, 2012 summary judgment hearing. In response,

respondent contends that appellant failed to properly request a continuance and that, even if her request was proper, the district court did not err by denying it.

A party may request a continuance pursuant to Minn. R. Civ. P. 56.06, on the ground that the non-moving party should be permitted time to conduct further discovery:

> Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present, by affidavit, facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

Minn. R. Civ. P. 56.06; *Molde v. CitiMortgage, Inc.*, 781 N.W.2d 36, 45 (Minn. App. 2010). Generally, when considering a request for a continuance, a district court should consider two factors: "first, whether the party seeking more time is acting from a good faith belief that material facts will be discovered, or is merely engaged in a 'fishing expedition,' and, second, whether the party has been diligent in seeking discovery prior to bringing the motion." *Bixler by Bixler v. J.C. Penney Co.*, 376 N.W.2d 209, 216-17 (Minn. 1985). But failure to submit an affidavit in accordance with rule 56.06 alone justifies the district court's decision to rule on the motion for summary judgment without granting the continuance. *Molde*, 781 N.W.2d at 45.

Here, appellant's attorney requested by a letter to the district court dated July 27, 2012, that the summary judgment motion hearing be postponed. She asserts that the district court judge's clerk stated "that the judge had instructed her that the hearing needed to be continued" and that she left on her scheduled trip to Nepal, "[r]elying on this statement." But appellant's attorney does not claim that the hearing actually was

continued or that she took the necessary steps to have it continued. Her reliance on the word of the judge's clerk was woefully misplaced. Moreover, the summary judgment papers made it clear that the referee, not the judge, would be hearing the motion, further suggesting that any reliance on the district court judge's clerk was not reasonable. Given that appellant's attorney was aware of the hearing and did not file an affidavit to request a continuance in accordance with rule 56.06, the district court did not err by declining to grant a continuance.

II.

Appellant next argues that the district court erred by entering summary judgment in favor of respondent because genuine issues of material fact existed on the claim of undue influence. The district court must grant summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03. In response to a motion for summary judgment, the adverse party "may not rest upon the mere averments or denials of the adverse party's pleading but must present specific facts showing that there is a genuine issue for trial." Minn. R. Civ. P. 56.05. A party must specifically identify the existence of factual issues for trial beyond pleading allegations. *Papenhausen v. Schoen*, 268 N.W.2d 565, 571 (Minn. 1978). If the adverse party fails to respond, "summary judgment, if appropriate, shall be entered against the adverse party." Minn. R. Civ. P. 56.05.

A party attempting to prove undue influence has the burden of establishing that it was exercised. *Norlander v. Cronk*, 300 Minn. 471, 475-76, 221 N.W.2d 108, 111-12 (1974). And when the party opposing summary judgment has the burden of proof on an essential element of the case, summary judgment is appropriate if that party "fails to make a showing sufficient to establish that essential element." *Eng'g & Constr. Innovations, Inc. v. L.H. Bolduc Co.*, 825 N.W.2d 695, 704 (Minn. 2013) (quotation omitted). Here, appellant failed to respond to respondent's motion for summary judgment; thus, she failed to meet her burden of proof to establish a prima facie case. Moreover, even despite appellant's failure to meet her burden of proof, respondent commendably presented sufficient evidence to rebut a claim of undue influence.

To establish undue influence, the will contestant must show that another person influenced the testator at the time the testator executed the will "to the degree that the will reflects the other person's intent instead of the testator's intent." *In re Estate of Torgersen*, 711 N.W.2d 545, 550 (Minn. App. 2006), *review denied* (Minn. June 20, 2006). A court considers several factors to assess whether a person exercised undue influence:

> (1) [whether there was] an opportunity to exercise influence; (2) the existence of a confidential relationship between the testator and the person claimed to have influenced the testator; (3) active participation by the alleged influencer in preparing the will; (4) an unexpected disinheritance or an unreasonable disposition; (5) the singularity of will provisions; and (6) inducement of the testator to make the will.

Id. at 551.

Here, respondent presented evidence related to all six factors to demonstrate that Harriet was not unduly influenced to create the 2009 will. This evidence included: (1) an affidavit from Harriet's physician that Harriet was always clear-headed, showed no signs of mental incapacity, and was never controlled or dominated by the Sattlers when they accompanied her to appointments; (2) an affidavit from the attorney who prepared the 2009 will, stating that Harriet was aware of what she was doing when she signed the 2009 will, that she was not unduly influenced, and that she intentionally omitted appellant from the 2009 will; and (3) deposition testimony from the Sattlers that Harriet had good reason to exclude appellant and her sons. It was also undisputed that Harriet had a close relationship with the Sattlers and had every reason to want to provide for them in her will. Appellant failed to contradict any of respondent's evidence refuting her claim that Harriet was unduly influenced and failed to meet her burden of establishing that claim. The district court did not err by granting respondent's motion for summary judgment.

III.

Appellant also argues that the district court erred by declining to vacate summary judgment. A district court may vacate a final judgment under Minn. R. Civ. P. 60.02, which provides, in relevant part,

> *On motion* and upon such terms as are just, the court may relieve a party or the party's legal representatives from a final judgment . . . and may order a new trial or grant such other relief as may be just for the following reasons:
>
> (a) Mistake, inadvertence, surprise, or excusable neglect.

(Emphasis added.) Appellant's argument has no merit. She did not file a motion requesting that the district court vacate summary judgment. Instead, appellant's attorney wrote a letter to the district court purporting to explain why her client should be permitted to proceed, in part based on rule 60.02.[1] Without a proper motion, we cannot conclude that the district court erred by declining to vacate summary judgment.

IV.

Finally, appellant argues that the district court erred by imposing rule 11 sanctions. Minn. R. Civ. P. 11.02 provides, in relevant part, that when an attorney presents a pleading, written motion, or other paper to the court, that attorney "is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances," "it is not being presented for any improper purpose" and that "the allegations and other factual contentions have evidentiary support or . . . are likely to have evidentiary support." If rule 11.02 has been violated, the district court may impose appropriate sanctions on the attorneys or the parties responsible for the violation. Minn. R. Civ. P. 11.03. Sanctions may be monetary and may include "reasonable attorney fees and other expenses incurred as a direct result of the violation." Minn. R. Civ. P. 11.03(b). "A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated." *Id.*

[1] In a letter to the district court, dated September 10, 2012, appellant claims that she is entitled to relief based the *Finden* factors. *See Finden v. Klaas*, 268 Minn. 268, 271, 128 N.W.2d 748, 750 (1964). But appellant fails to apply those factors, and the district court did not address them. Accordingly, we will not do so here.

The imposition of rule 11 sanctions in this case presents a difficult issue. We are not insensitive to the narrow standard of review that we must exercise. We review the district court's award of rule 11 sanctions for an abuse of discretion. *Collins v. Waconia Dodge, Inc.*, 793 N.W.2d 142, 145 (Minn. App. 2011), *review denied* (Minn. Jan. 1, 2011). But we are also aware that in considering rule 11 sanctions, the district court "should impose the least severe sanction necessary to effectuate the purpose of deterrence." *Uselman v. Uselman*, 464 N.W.2d 130, 145 (Minn. 1990). The district court might consider not only the presence of bad faith, but also the attorney's or party's ability to pay. *Id.* And the district court "must consider any relevant mitigating factors." *Id.*

Here, the district court found that rule 11 sanctions were warranted on the grounds that the contentions alleged by appellant and advocated by her attorney lacked evidentiary support and that the claims alleged and advocated were improper and needlessly increased the cost of litigation. It ordered appellant to pay $2,055.23 and her attorney to pay $15,155.30 as sanctions, which represented the total amount incurred in attorney fees and costs in litigating this matter.[2]

[2] The district court awarded sanctions for all attorney fees and costs incurred as a result of this litigation, despite the fact that appellant's attorney did not file a notice of appearance until February 2012. But the district court allocated $2,055.23 of the fees and costs awarded to appellant personally, which corresponds to the amount incurred before her current attorney appeared in February 2012, and $15,155.30 to appellant's current attorney, which corresponds to the amount incurred after she appeared. At oral argument, appellant conceded that respondent was not seeking to recover any of the fees and costs allocated to appellant's attorney that represented amounts incurred prior to her representation of appellant in this case.

In its memorandum explaining its decision to impose sanctions, the district court found that appellant and her attorney acted in bad faith by pursuing multiple baseless claims. It further found that appellant's attorney handled the litigation in a way that exhibited bad faith by arguing the summary judgment motion rather than the rule 11 motion during the September 10, 2012 hearing. It explained that imposing sanctions would deter future attorneys from disregarding timelines imposed by the Minnesota Rules of Civil Procedure, the Minnesota Rules of General Practice, and district court orders.

Appellant challenges the district court's finding that her objection to the 2009 will was baseless, relying on our opinion in *In re Estate of Smith*, 444 N.W.2d 566 (Minn. App. 1989). There, in a fact situation strikingly similar to that in this case, the daughter of the decedent appealed the imposition of rule 11 sanctions after losing her undue-influence challenge to her father's will after a trial. *Id.* at 567. The district court found that the daughter failed to prove that her father excluded her from the will as a result of undue influence and that she acted in bad faith in the conduct of the litigation. *Id.* We reversed, noting that some evidence existed to support the daughter's claims on each of the undue-influence factors. *Id.* at 568. We concluded that the district court had abused its discretion because appellant "had at least a colorable claim (good faith) of undue influence." *Id.*

Similarly here, appellant, as Harriet's disinherited daughter, had a colorable claim of undue influence because there was some evidence in support of all the factors for undue influence. Although appellant failed to satisfy her burden of proving undue

influence, her attempt to challenge her disinheritance "cannot be criticized on this record." *Id.* Because appellant had a colorable claim of undue influence, we conclude that the district court erred by imposing rule 11 sanctions for appellant's and her attorney's advocacy of this claim. *See id.*; *see also Peterson v. 2004 Ford Crown Victoria*, 792 N.W.2d 454, 461-62 (Minn. App. 2010) ("Our case law has generally held that a colorable or good-faith claim does not warrant sanctions.").

Further, the district court failed to consider the attorney's or party's ability to pay or any relevant mitigating factors. *See Uselman*, 464 N.W.2d at 145 (stating that the district court might consider ability to pay and must consider relevant mitigating factors). Given that facts related to ability to pay are not in the record, we have no independent basis for addressing that factor here. But we note that appellant's attorney is a sole practitioner who might have less ability to pay a law firm. *See id.* (noting that imposition of sanctions was done "without regard for the ability of this sole practitioner to pay such a sanction").

Although several of appellant's attorney's actions and procedural mis-steps were ill-advised, we conclude that the penalties imposed are not warranted under the circumstances of this case. In reaching our conclusion, we are guided by *Estate of Smith*, in which we cautioned that "trial courts should be mindful that the harsh sanction of bad faith attorney fees may inadvertently chill claimants and their attorneys from seeking redress for wrongs in close cases." 444 N.W.2d at 568.

We note that, rather than reversing the award of sanctions outright, we could have remanded to the district court for consideration of the factors set forth in *Uselman*. We

have considered that option but reject it. Having already determined that appellant has a colorable claim of undue influence, we conclude that it makes little sense to remand and incur additional costs—both emotional and financial—when it is unlikely to result in a different decision.

In sum, because appellant had a colorable claim to challenge the 2009 will and because the district court did not make otherwise relevant findings, we reverse the district court's imposition of rule 11 sanctions.

Affirmed in part and reversed in part.