STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1715

In re: Estate of Mary Victorine Carpentier Torgersen,
a/k/a Mary V. Torgersen, Decedent.

Filed September 16, 2008
Affirmed
Huspeni, Judge[*]

Hennepin County District Court
File Nos. 27-P4-03-000805, 27-00103326

William M. Hart, Timothy W. Ridley, Livia E. Babcock, Meagher & Geer, 33 South Sixth Street, Suite 4400, Minneapolis, MN 55402 (for appellant David P. Groves)

Bruce W. Larson, 746 Mill Street, Wayzata, MN 55391 (for respondent Ned Masbaum)

Considered and decided by Halbrooks, Presiding Judge; Schellhas, Judge; and Huspeni, Judge.

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

HUSPENI, Judge

In this appeal from the district court's award of attorney fees to respondent, appellant argues that the district court's findings are erroneous and insufficient and that the award was unreasonable as a matter of law. We affirm.

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

FACTS

This attorney-fee dispute arises out of a will contest, in which respondent Ned P. Masbaum unsuccessfully claimed that decedent Mary Torgersen lacked testamentary capacity and was unduly influenced in making a November 2002 will that named appellant David Groves as personal representative. The facts of Masbaum's will contest are set forth in full in *In re Estate of Torgersen (Torgersen I)*, 711 N.W.2d 545 (Minn. App. 2006), *review denied* (Minn. June 20, 2006). In that opinion, we affirmed the district court's decision regarding Masbaum's will contest but reversed and remanded the district court's decision regarding Masbaum's request for attorney fees. Specifically, we instructed the district court to consider whether Masbaum, who was named as personal representative in a prior will, had prosecuted his will contest in good faith and, if so, to allow reasonable attorney fees. On remand, the district court found that Masbaum had acted in good faith and awarded him $57,000 in attorney fees. This appeal followed.

D E C I S I O N

This court reviews a district court's decision to award or deny attorney fees in a probate proceeding for an abuse of discretion. *In re Estate & Trust of Anderson*, 654 N.W.2d 682, 688 (Minn. App. 2002), *review denied* (Minn. Feb. 26, 2003). Whether a person challenging a will is acting in good faith is a question of fact, and we will not disturb the district court's factual findings unless clearly erroneous. *Torgersen I*, 711 N.W.2d at 555; *In re Estate of Evenson*, 505 N.W.2d 90, 91 (Minn. App. 1993).

A district court may award attorney fees to "[a]ny personal representative or person nominated as personal representative who defends or prosecutes any proceeding

in good faith, whether successful or not." Minn. Stat. § 524.3-720 (2006). Section 524.3-720 not only allows a personal representative to recover attorney fees, but also specifically allows recovery of attorney fees by an individual who is nominated as personal representative, whether the will in which that individual is nominated is admitted to probate or not. *Torgersen I*, 711 N.W.2d at 554. An award of attorney fees is permissible only when the personal representative or nominated personal representative acts in good faith, and any award of attorney fees must be reasonable under the circumstances. *Id.* at 555.

I.

Groves argues that the district court's finding that Masbaum acted in good faith is insufficient and erroneous. "The district court must make sufficient findings to permit meaningful appellate review." *Metro. Sports Facilities Comm'n v. Minn. Twins P'ship*, 638 N.W.2d 214, 220 (Minn. App. 2002), *review denied* (Minn. Feb. 4, 2002). The district court's findings are sufficient if they demonstrate that the district court considered the relevant issue. *See Geske v. Marcolina*, 624 N.W.2d 813, 817 (Minn. App. 2001) (stating, in context of dissolution proceeding, that lack of specific findings is "not fatal to an [attorney-fee] award where review of the order reasonably implies that the district court considered the relevant factors and where the district court was familiar with the history of the case" (quotations omitted)); *Automated Bldg. Components, Inc. v. New Horizon Homes, Inc.*, 514 N.W.2d 826, 831 (Minn. App. 1994) (affirming attorney-fee award in foreclosure action based on district court's consideration of some factors and adequate record support for others), *review denied* (Minn. June 15, 1994). Thus, we will

affirm the district court if its finding on good faith adequately demonstrates that the district court considered the issue of good faith and its finding is not clearly erroneous.

Good faith is "incapable of precise definition." *Hursh v. Theis* (*In re Estate of Healy)*, 247 Minn. 205, 210, 76 N.W.2d 677, 681 (1956). But in the context of will contests, it relates to an honest, even if mistaken, belief in the validity or invalidity of the will. *See id.* at 209, 76 N.W.2d at 680 (interpreting "good faith" in predecessor statute to Minn. Stat. § 524.3-720). The existence of a personal interest in sustaining or defeating a will "is a factor to be considered on the issue of 'good faith,'" but it does not necessarily preclude a finding of good faith. *Id.* at 210, 76 N.W.2d at 680; *see also Evenson*, 505 N.W.2d at 91 (holding that district court's finding of good faith was not clearly erroneous with respect to attorney-fee award to personal representative who unsuccessfully defended will that would have benefitted him).

The district court found that "Masbaum acted in good faith in contesting the probate of Mary Torgersen's November 2002 will throughout all litigation, including the appellate process." Although this is the district court's sole finding on the issue, the finding itself demonstrates the district court's awareness that it needed to resolve the issue of good faith, as required by *Torgersen I.* The district court's finding of good faith is tantamount to a finding that Masbaum's contest was based on an honest, even if mistaken, belief in the invalidity of the November 2002 will. *See Healy*, 247 Minn. at 209 n.5, 76 N.W.2d at 680 n.5 ("Good faith is an ultimate fact. It means honest belief." (quotation omitted)).

Indeed, the district court's finding of good faith necessarily depends on a credibility determination regarding the honesty of Masbaum's belief in his claim. *Cf. Augustine v. Arizant Inc.*, 751 N.W.2d 95, 100 (Minn. 2008) (stating in context of indemnification action that trier of fact evaluates the credibility of a claim of good faith). We will not disturb the district court's findings based on credibility determinations. *Estate of Hartz v. Nelson*, 437 N.W.2d 749, 754 (Minn. App. 1989), *review denied* (Minn. July 12, 1989). In deferring to the district court's implicit credibility determination, we are particularly cognizant of the fact that the judge who awarded Masbaum attorney fees was the same judge who affirmed the referee's decision in the underlying proceeding and was, therefore, familiar with the case.[1] *Geske*, 624 N.W.2d at 817 (suggesting that district court's familiarity with the history of the case may justify forgiveness of insufficient findings).

Although Masbaum was unable to meet the high standard required for success on a claim of undue influence or lack of testamentary capacity, *see Torgersen I*, 711 N.W.2d at 550-54 (discussing requirements of both claims), his claim was not entirely devoid of merit. Rather, the referee's order, which the district court adopted, repeatedly references evidence of the Groveses' influence on decedent and decedent's diminishing mental capacity. And the district court, in awarding Masbaum attorney fees, found that the

[1] The 18-page referee's order included 19 lengthy findings of fact and 7 conclusions of law, which described in detail the tumultuous relationship between the parties. On review of that order, the district court affirmed and stated in the memo attached to its order the following: "[The referee] made extensive, detailed Findings of Fact, and there is ample evidence in the record to support his Findings. The undersigned has reviewed the record, the argument and memoranda of the parties, and the legal reasoning of [the referee] and concludes that the [r]eferee reached the correct result."

complexity and novelty of the issues warranted the award. Thus, the substantial, although insufficient, evidentiary basis for Masbaum's contest provides adequate evidentiary support for the district court's finding of good faith, and the district court did not clearly err by finding that Masbaum acted in good faith.

II.

Groves also argues that the district court's award of $57,000 in attorney fees was unreasonable as a matter of law because it amounts to nearly half of the value of decedent's estate. As noted above, the district court has substantial discretion in determining the reasonableness of an award of attorney fees. *Anderson*, 654 N.W.2d at 688. In exercising this discretion, the district court is guided by Minn. Stat. § 525.515(b) (2006), which sets forth five factors applicable in all probate proceedings for assessing the reasonableness of attorney fees. The district court shall consider (1) the time and labor required, (2) the attorney's experience and knowledge, (3) the complexity and novelty of the problems involved, (4) the extent of the responsibilities assumed and the results obtained, and (5) the sufficiency of assets properly available to pay for the services. Minn. Stat. § 525.515(b). "In determining the reasonableness of the attorney fees, consideration shall be given to all the factors listed in clause (b) and the value of the estate shall not be the controlling factor." Minn. Stat. § 525.515(c).

Here, the district court specifically found that the first four factors set forth in section 525.515 "all support a finding that a portion of the attorney fees was reasonable and necessary." The district court also separately addressed the size of the award relative

to the size of the estate and decided that $57,000[2] was reasonable as an award of attorney fees for the work done in Masbaum's will contest. These proceedings included a five-day trial before a referee, motion hearings before the district court, and a previous appeal. The record also reflects that Masbaum offered to mediate the dispute prior to trial and offered to settle the dispute shortly after filing the initial appeal. Considering the length of these proceedings, Masbaum's apparent attempt to shorten the proceedings, and the district court's explicit finding that Masbaum pursued the will contest, including the appeal, in good faith, the district court's award of $57,000 in attorney fees was not an abuse of discretion.

However, Groves also specifically argues that the district court erred by awarding fees to Masbaum that were incurred in seeking fees. Groves cites caselaw from several other jurisdictions but does not identify any Minnesota caselaw in support of his argument, nor has our research uncovered any. To the contrary, section 524.3-720 provides for an award of attorney fees directly to the personal representative or nominated personal representative who assumed in good faith the burden of testing the validity of the will.[3] *Torgersen I*, 711 N.W.2d at 555 (stating that section 524.3-720

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[2] Masbaum petitioned to recover $85,716.88 in costs and attorney fees ($79,495.50 initially set forth in his petition and an additional $6,221.50 incurred after the petition was filed). The district court found that $18,396.76 was not related to the underlying litigation, and that the remaining sum of $67,370.12 that was attributable to contesting the will would unduly deplete an estate of $115,000 and was not a reasonable sum. The court concluded that "[j]ust and reasonable attorneys fees and costs are $57,000."

[3] Moreover, we note that although many other states bar recovery of fees incurred in seeking fees, "each state's pertinent statutory scheme is different," and even states barring recovery of fees incurred in seeking fees have recognized the validity of "the

permits a nominated personal representative to, "in good faith, pursue appropriate legal proceedings without having to risk personal financial loss by underwriting the proceeding's expenses"). Reimbursing the personal representative or nominated personal representative not only for fees incurred in testing the will but also for fees incurred in seeking those fees is consistent with the statute. Because nothing in Minnesota law precludes the district court from awarding fees incurred in seeking fees, and such an award is consistent with the statute, awarding fees for seeking fees was not an abuse of discretion.

A final note: We are not insensitive to the fact that $57,000 in attorney fees and costs approaches 50% of the value of decedent's estate. It is not without considerable deliberation that we have found that award to be within the discretion of the district court. But we are aware, as surely the district court was, of the lengthy and extremely acrimonious litigation that preceded the decision regarding attorney fees. This family has been sadly torn asunder by events and circumstances and actions leading to the expenditure of both financial and emotional resources. It is time that this litigation is ended; any continuance of it would not only drain the remaining financial resources of the estate, but inexcusably add to the emotional toll already exacted.

Affirmed.

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policy argument that precluding 'fees for fees' claims may have a deleterious effect on the ability of an estate to retain qualified and competent counsel." *Sloan v. Sloan* (*In re Sloan Estate*), 538 N.W.2d 47, 49-50 (Mich. Ct. App. 1995).