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1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 **LELAND W. HACKETT,**

3 Petitioner-Appellant,

4 **v.**

No. 32,386

5 **DOROTHY JANET WADE, Personal**
6 **Representative,**

7 Respondent-Appellee,

8 **IN THE MATTER OF THE ESTATE OF**
9 **BILLY JOE HELM, Deceased.**

10 **APPEAL FROM THE DISTRICT COURT OF EDDY COUNTY**

11 **Jane Shuler Gray, District Judge**

12 Leland W. Hackett
13 Artesia, NM

14 Pro Se Appellant

15 Wilfred T. Martin, Jr.
16 Carlsbad, NM

17 for Appellee

18 **MEMORANDUM OPINION**

19 **FRY, Judge.**

1 Petitioner appeals from the district court order dismissing his petition to set
2 aside the informal probate of Billie Joe Helm’s last will and testament. Petitioner
3 identifies four issues on appeal: (1) the district court erred in finding the oral
4 agreement between Helm and Petitioner unenforceable; (2) the district court erred in
5 finding Petitioner was not an interested person as defined by NMSA 1978, Section 45-
6 1-201(A)(26) (2011); (3) the district court erred in concluding that Petitioner had no
7 standing to bring an action to have Helm’s will set aside; and (4) the district court
8 erred in its determination that Petitioner’s claim of tortious interference had nothing
9 to do with the probate of the will. [DS 5-6] This Court issued a calendar notice
10 proposing to reverse. Respondent has filed a memorandum in opposition to this
11 Court’s proposed disposition, which we have duly considered. Unpersuaded, we
12 reverse.

13 In this Court’s calendar notice, we pointed out that Section 45-1-201(A)(26) of
14 the Uniform Probate Code defines an “interested person” to include: “heirs, devisees,
15 children, spouses, creditors, beneficiaries and any others having a property right in or
16 claim against a trust estate or the estate of a decedent.” We further pointed out that
17 Petitioner had alleged a claim of tortious interference with expected inheritance. [CN
18 3; RP 75] We noted that “where matters relating to the validity of the testamentary
19 instrument are present, the courts have determined that the probate proceeding is the

1 proper place to pursue such issues.” *Peralta v. Peralta*, 2006-NMCA-033, ¶ 13, 139
2 N.M. 231, 131 P.3d 81. [CN 4] We therefore proposed to conclude that Petitioner
3 had “an interest in the probate proceedings and the district court erred in not
4 addressing the impact of Petitioner’s claim for tortious interference with an
5 expectation of inheritance in determining that dismissal was appropriate.” [CN 5]

6 In her memorandum in opposition, Respondent points out that Petitioner argued
7 his tortious interference with inheritance claim at the hearing, but the district court
8 considered Petitioner’s claim and still determined Petitioner lacked standing. [MIO
9 unpaginated 2]¹ Respondent does not, however, address this Court’s proposed
10 disposition to the extent we proposed to conclude that Petitioner had an interest in the
11 probate proceedings based on his allegations of tortious interference with an expected
12 inheritance. [CN 4 (“[W]e suggest that, given Petitioner’s allegations of undue
13 influence and his inability to recover through probate, he may have a claim available
14 to him of tortious interference with an expected inheritance.”)] While Respondent
15 asserts that the district court considered Petitioner’s claim of tortious interference,
16 Respondent does not argue why the district court’s determination that Petitioner
17 lacked standing was correct or, likewise, why this Court’s suggestion that Petitioner

18 ¹ This Court directs Respondent-Appellee to Rule 12-305(B)(3) NMRA, which
19 requires that documents filed with this Court be “paginated with consecutive page
20 numbers at the bottom.”

1 had established that he had standing by alleging a tortious interference with
2 inheritance claim was in error. *See Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124
3 N.M. 754, 955 P.2d 683 (“Our courts have repeatedly held that, in summary calendar
4 cases, the burden is on the party opposing the proposed disposition to clearly point out
5 errors in fact or law.”).

6 Moreover, to the extent Respondent contends that Petitioner does not have
7 standing because he cannot establish he is an heir, Respondent again fails to address
8 the analysis contained in our proposed disposition. [MIO unpaginated 2-3] The tort
9 of intentional interference with expected inheritance “will not lie when probate
10 proceedings are available to address the disposition of disputed assets and can
11 otherwise provide adequate relief.” *Wilson v. Fritschy*, 2002-NMCA-105, ¶ 35, 132
12 N.M. 785, 55 P.3d 997. Thus, Respondent’s argument that Petitioner cannot
13 demonstrate that he can inherit through intestacy does not address this Court’s
14 proposed conclusion that Petitioner’s claim of tortious interference with expected
15 inheritance provides him standing. Because this Court has previously held that “where
16 matters relating to the validity of the testamentary instrument are present . . . the
17 probate proceeding is the proper place to pursue such issues[,]” *Peralta*, 2006-NMCA-
18 033, ¶13, and because in order to establish a claim of tortious interference with
19 expected inheritance Petitioner would have to challenge the validity of the codicil, *id.*

1 ¶ 16, we conclude that the district court erred in dismissing Petitioner’s petition to set
2 aside informal probate. *See also* NMSA 1978, § 45-3-401(A)(2) (1975) (providing
3 that “[a] formal testacy proceeding may be commenced by an interested person filing[]
4 . . . a petition to set aside an informal probate of a will or to prevent informal probate
5 of a will which is the subject of a pending application”); Section 45-1-201(A)(26)
6 (defining an “interested person” as including “any others having a property right in
7 or claim against a trust estate or the estate of a decedent”).

8 For the reasons stated above and in this Court’s notice of proposed disposition,
9 we reverse and remand for further proceedings consistent with this opinion.

10 **IT IS SO ORDERED.**

11 _____
12 **CYNTHIA A. FRY, Judge**

13 **WE CONCUR:**

14 _____
15 **MICHAEL E. VIGIL, Judge**

16 _____
17 **TIMOTHY L. GARCIA, Judge**