STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0016

In re the Estate of:
Albert Garcia, Sr., Decedent

Filed October 9, 2017
Appeal dismissed
Ross, Judge

Hennepin County District Court
File No. 27-PA-PR-08-79

John G. Westrick, Westrick & McDowall-Nix, PLLP, St. Paul, Minnesota; and

Samuel A. Savage, Savage Law, LLC, Minneapolis, Minnesota (for appellants)

Luther M. Amundson, J. Noble Simpson, Maser, Amundson, Boggio & Hendricks, P.A., Richfield, Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Schellhas, Judge; and J. Smith, Judge.*

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

ROSS, Judge

Respondent Alfred Garcia held an undisputed 50% ownership interest in a residential property. Decedent Albert Garcia Sr.'s heirs, appellants here, disputed ownership of the remaining 50% interest in probate court. On respondent's petition, the

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

district court ordered the property sold and permitted sale costs to be deducted from the gross sale proceeds. Appellants argue that the district court erred by ordering the sale before determining final ownership interests and by allowing sale costs to be deducted from the decedent's potential interest despite the possible applicability of a homestead exemption. The parties stipulated to dismissing the first issue and proceeded to oral argument on the sale-costs issue. Because the district court has not determined final ownership interests or whether the property was decedent's homestead, the sale-costs issue presents no justiciable controversy for our review. We therefore dismiss the appeal.

FACTS

Albert Garcia Sr. died intestate in 2005, and the probate court awarded appellant heirs 1/4 interests in his estate. Decedent's brother, respondent Alfred Garcia, challenged decedent's ownership interest in the property, a residential home. Respondent owns an undisputed 50% interest in the property. Appellants claimed that the decedent owned the remaining 50% interest, which passed to them in shares. Respondent claimed ownership of that same 50% interest (for an undivided 100% ownership interest).

Respondent petitioned to sell the property on April 20, 2016. In August 2016 the district court held a hearing at which appellants argued, "[W]e just want to be sure that any cost of sale or whatnot that come[s] out of this, if it turns out that this was [decedent's] homestead, as we continue to assert it was, that none of the costs of sale can come out."

The district court found that respondent held an undisputed 50% interest in the property, that the property could not be partitioned or divided, that respondent continued incurring costs relating to the property, and that sale was "in the best interest of this Estate

and the interested parties hereto, and is both necessary and expedient." It ordered respondent to prepare and sell the property. It also ordered, "Realtor fees, closing costs, real estate taxes, and other usual sale costs of a seller shall be allowed to be deducted from the gross sale proceeds in order to accomplish the sale of the Property."

Appellants challenged the district court's order, arguing that the district court erred by granting respondent's petition to sell the property and by allowing sale costs to be deducted from the gross in this court.

D E C I S I O N

The district court ordered the property sold before determining ownership of the contested 50% interest, and it ordered the sale costs to be deducted from the gross sale proceeds. Following the stipulated partial dismissal, appellants' only argument on appeal is that the district court abused its discretion by permitting sale costs to be deducted because the homestead exception would apply if the ownership dispute was resolved in their favor. We ordinarily review a district court's division of assets in partition proceedings for an abuse of discretion. *See Glenwood Inv. Props., L.L.C., v. Carroll A. Britton Family Tr.*, 765 N.W.2d 112, 117 (Minn. App. 2009). But respondent contends that we should dismiss the appeal because the case lacks any justiciable controversy. Respondent is correct.

"The existence of a justiciable controversy is prerequisite to adjudication. The judicial function does not comprehend the giving of advisory opinions. No controversy is presented, absent a genuine conflict in the tangible interests of opposing litigants." *Izaak Walton League of Am. Endowment, Inc. v. State, Dept. of Nat. Res.*, 312 Minn. 587, 589, 252 N.W.2d 852, 854 (1977). The existence of a justiciable controversy is essential to the

exercise of our appellate jurisdiction, and the issue of justiciability may be raised at any time. *See In re Guardianship of Tschumy*, 853 N.W.2d 728, 733–34 (Minn. 2014). We review justiciability issues de novo. *McCaughtry v. City of Red Wing*, 808 N.W.2d 331, 337 (Minn. 2011).

Appellants premise their argument on Minnesota Statutes section 524.2-402(c) (2016), which provides, "If the homestead passes by descent . . . to the spouse or decedent's descendants . . . it is exempt from all debts which were not valid charges on it at the time of decedent's death . . . ." Their argument is essentially this: *if* the district court determines that decedent owned a 50% interest in the property, and *if* the district court determines that the property was decedent's homestead, and *if* the district court decides that the homestead exemption applies, *then* the district court's costs decision was improper.

On the record before us, the district court made none of these three contingent determinations. Without any determination of ownership, any injury to appellants is purely hypothetical. Appellants do not dispute this, conceding the point at oral argument. "Issues which have no existence other than in the realm of future possibility are purely hypothetical and are not justiciable." *Federated Mut. Ins. Co. v. Litchfield Precision Components, Inc.*, 456 N.W.2d 434, 439 (Minn. 1990) (quotation omitted). Because the district court has made none of the contingent determinations, our opinion on the merits would be advisory only. We will not offer an advisory opinion.

Appeal dismissed.