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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-2016**

In re: Estate of Sandra Sandland, Deceased.

**Filed December 10, 2018
Affirmed in part, reversed in part, and remanded
Klaphake, Judge***

Hennepin County District Court
File No. 27-PA-PR-17-891

Patrick W. Ledray, Brooklyn Park, Minnesota (for appellant Dennis Sandland)

John A. Wehrly, Foster Brever Wehrly, PLLC, St. Anthony, Minnesota (for special administrator Kristy Sandland)

Considered and decided by Worke, Presiding Judge; Halbrooks, Judge; and Klaphake, Judge.

UNPUBLISHED OPINION

KLAPHAKE, Judge

Appellant was arrested and charged with murdering his wife. A special administrator was appointed to represent the decedent's estate. Appellant and the special administrator challenge the district court's order. Appellant argues that the district court erred by denying his motion to allow his attorney-in-fact to access the marital home to

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

investigate the premises and obtain appellant's personal belongings. The special administrator argues that appellant did not have standing to seek access to the property. Because appellant's attorney-in-fact is an "interested person" under Minn. Stat. § 524.1-201(33) (2018), we affirm the district court's order on standing. Because appellant's attorney-in-fact had an equal right to possession of the marital home, a tenancy in common, we reverse and remand the district court's order denying access.

D E C I S I O N

I. Appellant is an "interested person" under Minn. Stat. § 524.1-201(33).

The special administrator argues that the district court erred in interpreting the definition of "interested person" to include appellant as the decedent's spouse. The special administrator argues that appellant lost his title as "spouse" for purposes of determining "interested persons" by feloniously and intentionally killing his wife, and therefore, does not have standing to challenge the district court's decision.

We apply a de novo standard of review to the legal issue of interpreting statutes. *In re Estate of Butler*, 803 N.W.2d 393, 397 (Minn. 2011). We interpret statutes by ascertaining and effectuating the intent of the legislature. *Christianson v. Henke*, 831 N.W.2d 532, 536 (Minn. 2013). The first step "is to determine whether the statute's language, on its face, is ambiguous." *Id.* In doing so, we give the words and phrases their plain and ordinary meaning. *Id.*

Minnesota Statutes section 524.1-201(33) defines an "interested person" as "heirs, devisees, children, spouses, creditors, beneficiaries and any others having a property right or claim against the estate of a decedent." Minn. Stat. § 524.1-201(33). We give the word

“spouse” its plain and ordinary meaning, which is a “marriage partner; a husband or wife.” *The American Heritage Dictionary of the English Language* 1694 (5th ed. 2011) (defining spouse). We also give the phrase “any others having a property right” its plain and ordinary meaning, which is a person who owns or has an interest in possessions, real estate, tangible items, or intangible items. *See id.* at 1412 (defining property). Thus, the statute is unambiguous and we apply its language to this case.

Here, appellant is both a spouse and a person with a property right affected by the estate. Although appellant may have lost his status as an heir by “feloniously and intentionally” killing his wife, *see* Minn. Stat. § 524.2-803(a), (f) (2018), appellant is not precluded from bringing a claim in district court. Thus, appellant is an “interested person” with standing to file his claim in district court.

II. The district court erred in denying appellant’s motion to allow his attorney-in-fact to enter the house to investigate the premises and collect appellant’s personal belongings.

Appellant argues that his attorney-in-fact should be permitted to inspect the premises and obtain appellant’s personal items. The special administrator disagrees and argues that she may exclude any third party from the house because she serves in the decedent’s position as a tenant in common with appellant.

“Any joint tenant who feloniously and intentionally kills another joint tenant thereby effects a severance of the interest of the decedent so that the share of the decedent passes as the decedent’s property and the killer has no rights by survivorship.” Minn. Stat. § 524.2-803(b) (2018). A joint tenant whose interest is severed becomes a tenant in common. *Johnson v. Gray*, 533 N.W.2d 57, 62 (Minn. App. 1995) (citing *Gau v. Hyland*,

41 N.W.2d 444, 447 (Minn. 1950)). A tenancy in common is a “tenancy by two or more persons, in equal or unequal undivided shares, each person having an equal right to possess the whole property but no right of survivorship.” *Black’s Law Dictionary*, 1695 (10th ed. 2014) (defining tenancy in common). A tenant in common shares a common right to possess the entire interest of the property. *See Adams v. Johnson*, 136 N.W.2d 78, 81 (Minn. 1965). But a tenant in common may not exclude a cotenant. *Petraborg v. Zontelli*, 15 N.W.2d 174, 177 (Minn. 1944).

We recognize that “[a] special administrator is a personal representative of a decedent,” *Jones v. Minn. Transfer Ry. Co.*, 121 N.W. 606, 607 (Minn. 1909), appointed “to preserve the estate or to secure its proper administration,” Minn. Stat. § 524.3-614 (2) (2018). A special administrator appointed by the court “has the power of a general personal representative.” Minn. Stat. § 524.3-617 (2018). “Until termination of the appointment a personal representative has the same power over the title to property of the estate that an absolute owner would have.” Minn. Stat. § 524.3-711 (2018).

Likewise, an agent who is given power of attorney has the authority to act for the principal. *In re Will of Kipke*, 645 N.W.2d 727, 732-33 (Minn. App. 2002), *review denied* (Minn. Aug. 20, 2002); *see also* Minn. Stat. § 523.23, subd. 1 (2018) (short form power of attorney). By issuing a valid short form power of attorney, the principal authorizes the attorney-in-fact “to use in any way . . . any real property in which the principal has, or claims to have, any estate or interest,” and

to do any act of management or of conservation, with respect to any tangible personal property or to any interest in any tangible personal property owned, or claimed to be owned, by the principal, including by way of illustration, but not of restriction, power to . . . obtain or regain possession, or protect the tangible personal property or interest in any tangible personal property, by action, proceeding, or otherwise.

Minn. Stat. § 523.24, subds. 1(5), 2(4) (2018).

Here, the special administrator was appointed as the legal representative of the decedent and appellant's attorney-in-fact was authorized to serve as the legal representative of appellant. Both legal representatives act on behalf of the tenants in common. Neither tenant in common may exclude the other from the property because they share an equal right to possess and use it. The district court erred in concluding that the special administrator could exclude appellant's attorney-in-fact from the house.

We reverse and remand to the district court for an order authorizing appellant's attorney-in-fact access to the house to obtain appellant's personal property, limited by whatever terms and conditions are appropriate.

Affirmed in part, reversed in part, and remanded.