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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0217**

Estate of:
Steven C. Kukowski, Decedent

**Filed August 27, 2018
Affirmed
Bratvold, Judge**

Winona County District Court
File No. 85-PR-11-1305

Karl W. Sonneman, Winona, Minnesota; and

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Considered and decided by Bratvold, Presiding Judge; Connolly, Judge; and Smith, Tracy M., Judge.

UNPUBLISHED OPINION

BRATVOLD, Judge

Appellant Estate of Dolores A. Kukowski (the Dolores estate) challenges the district court's order compelling it to sign a release and stipulation of dismissal of its claims against respondent Estate of Steven C. Kukowski (the Steven estate). Because we agree with the district court that the parties' memorandum of understanding is an enforceable settlement agreement, we affirm.

FACTS

Edward D. Kukowski and Dolores A. Kukowski had three children, Susan K. Groth, Patti C. Thompson, and Steven C. Kukowski. Edward died in 2009, and his will left his entire estate to Dolores. Dolores died in June 2010. Dolores's will, in relevant part, devised the "rest, residue and remainder" of her estate to her three children "in equal shares." Groth was appointed the personal representative of the Dolores estate. Shortly after Dolores died, Steven died. On July 28, 2011, Nancee A. Kukowski, Steven's wife, was appointed the personal representative of the Steven estate.

In October 2011, the Dolores estate filed a statement of claim against the Steven estate for \$194,480, asserting that Steven had "removed guns and other personal property from [Dolores'] home after [Edward] died without paying for them and without [Dolores'] consent." The claim included a list of "missing assets," specifically, 34 guns, "Sites, Parts, Barrels, Ammunition, Indian Artifacts, and Artillery Shells," a tractor, a boat and motor, a diamond ring, and two fishing poles. The claim also stated that Steven owed Dolores "\$20,000 for [a] land transfer."

The Dolores and Steven estates made several attempts to resolve the claim. On April 20, 2016, Groth and Nancee attended a mediation and were represented by counsel. After all-day negotiations, the parties and their attorneys signed a mostly handwritten memorandum of understanding (MOU). Five provisions in the MOU are relevant to this appeal: (1) the Steven estate disclaimed "any interest in the homestead" of the Dolores estate; (2) the Steven estate promised to return to the Dolores estate certain personal property, specifically, a boat, motor, boat accessories, and firearms identified in an attached

exhibit; (3) both estates agreed to equally divide a lot between Steven and Dolores's residences and the Steven estate agreed to pay 2016 real estate taxes for the lot; (4) both estates agreed that the value of the "house, boat, lot, and guns" "shall not be included" in the Dolores estate when determining the distributive share; and (5) the Dolores estate agreed to dismiss with prejudice its claim against the Steven estate and to provide a written release of "all claims of whatever nature."

The MOU expressly anticipated "formal documents" that would "facilitate the detail of our agreement," but also expressly provided that "we do not intend our settlement to be dependent upon our agreement as to any such detail, and agree that our agreements contained here are fully enforceable against us."

In subsequent exchanges, the parties struggled to prepare a formal settlement agreement. Both parties submitted proposed agreements, but neither estate executed an agreement, although the Steven estate returned the personal property identified in the MOU. About six months after the mediation had concluded, the Steven estate filed a motion to enforce the MOU. The Steven estate asked the district court to order the Dolores estate to (a) sign the release and settlement agreement (Steven release) and a stipulation of dismissal with prejudice, (b) reimburse the Steven estate for real estate taxes, and (c) pay attorney fees and expenses that the Steven estate had incurred in bringing the motion.

The Dolores estate opposed the motion and argued that, while Groth, as personal representative of the Dolores estate, had authority to "settle matters for the estate and its heirs," Groth had exceeded her authority in the MOU because it attempted "to adjust the distributions from" the Dolores estate. The Dolores estate also argued that the MOU was

not enforceable because it did not include sufficient and necessary details. Finally, the Dolores estate argued that it should not be required to sign the Steven release until it received “delivery of the deed for land transferred from Nancee Kukowski to” the Dolores estate, as referenced in the MOU.

On January 2, 2018, the district court granted the Steven estate’s motion. First, the district court determined that the MOU is a “binding agreement” because Groth, as the personal representative of the Dolores estate, was “specifically authorized to engage in settlement.” The district court agreed with the Dolores estate that it did not need to sign the Steven release until the Steven estate delivered the deed for the lot transferred to the Dolores estate, as provided in the MOU. The district court’s order directed (1) Nancee to deliver the deed to Groth; (2) Groth to sign the Steven release and stipulation for dismissal; (3) the Dolores estate to reimburse the Steven estate for taxes it had paid for the transferred lot; and (4) the Dolores estate to pay attorney fees to the Steven estate. The Dolores estate appeals.¹

D E C I S I O N

I. The district court did not abuse its discretion in enforcing the MOU.

Settlement agreements are greatly favored and are not set aside lightly. *Beach v. Anderson*, 417 N.W.2d 709, 711-12 (Minn. App. 1988), *review denied* (Minn. Mar. 23, 1988); *see also Minneapolis Star & Tribune Co. v. Schumacher*, 392 N.W.2d 197, 205 (Minn. 1986) (stating settlement of claims is encouraged as a matter of public policy).

¹ The Dolores estate’s brief to this court states that attorney fees and taxes “have been paid and are not the subject of this appeal.”

Generally, an appellate court reviews a district court's decision on a motion to enforce a settlement agreement for abuse of discretion. *Johnson v. St. Paul Ins. Cos.*, 305 N.W.2d 571, 573 (Minn. 1981) (stating that district court's refusal to vacate a settlement is within its discretion and "will not be reversed unless it be shown that the [district] court acted in such an arbitrary manner as to frustrate justice" (quotation omitted)). On the other hand, a district court's interpretation of a settlement agreement is reviewed de novo because a settlement agreement is a contract. *TNT Props., Ltd. v. Tri-Star Developers LLC*, 677 N.W.2d 94, 100-01 (Minn. App. 2004).

The district court correctly determined that the MOU is a valid, enforceable settlement agreement. A settlement is enforceable if there is a definite offer and acceptance with a meeting of the minds on the essential terms of the agreement. *Jallen v. Agre*, 264 Minn. 369, 373, 119 N.W.2d 739, 743 (1963). A mediated settlement agreement is binding if:

- (1) it contains a provision stating that it is binding and a provision stating substantially that the parties were advised in writing that
 - (a) the mediator has no duty to protect their interests or provide them with information about their legal rights;
 - (b) signing a mediated settlement agreement may adversely affect their legal rights; and
 - (c) they should consult an attorney before signing a mediated settlement agreement if they are uncertain of their rights.

Minn. Stat. § 572.35, subd. 1(1) (2016). Here, the MOU stated that it was binding, the mediator had no duty to protect any of the parties' interests, the settlement agreement may adversely affect the parties' rights, and the parties should consult with an attorney if they were uncertain of their rights. Thus, the MOU fully complied with the applicable statute,

and as a result, is a binding agreement. *See Haghghi v. Russian-Am. Broad. Co.*, 577 N.W.2d 927, 929 (Minn. 1998) (stating that a “mediated settlement agreement will not be enforceable unless it contains a provision stating that it is binding”).

The Dolores estate contends that the district court’s decision to enforce the MOU was an abuse of its discretion because Groth exceeded her authority as personal representative when she executed the MOU and because the MOU is not sufficiently definite, nor is the Steven release complete. We address each issue in turn.

A. The personal representative of the Dolores estate had authority to settle the estate’s claims against the Steven estate in the MOU.

A personal representative has authority to settle the claims of the estate under the probate code. Minn. Stat. § 524.3-715(27) (2016) (providing that, unless restricted by the will or by court order, a personal representative may “acting reasonably for the benefit” of interested persons “satisfy and settle claims”). In its brief to this court, the Dolores estate concedes that Groth had authority to settle the Dolores estate’s claim against the Steven estate. But, the Dolores estate argues, Groth exceeded her statutory authority because the MOU attempted “to adjust the distributions from” the Dolores estate. The Steven estate responds that “any distribution issue” is not an impediment to enforcing the MOU because the distribution of the Dolores estate and the settlement of the Dolores estate’s claim against the Steven estate are separate issues. We agree with the Steven estate.

The Dolores estate’s argument stems from a provision in the probate code that addresses how beneficiaries may agree to alter interests in a will. Under Minnesota law, beneficiaries “may agree among themselves to alter the interests, shares, or amounts to

which they are entitled under the will of the decedent, or under the laws of intestacy, in any way that they provide in a written contract executed by all who are affected by its provisions.” Minn. Stat. § 524.3-912 (2016). In this case, one beneficiary of the Dolores estate, Thompson, was not at present at the April 2016 mediation and did not sign the MOU. The Dolores estate argues that, because the MOU purports to alter distributions from the Dolores will, and these alterations are unenforceable under section 524.3-912, the MOU is not enforceable.²

It is true that, under section 524.3-912, any agreement among beneficiaries to alter the interest and amount to which they are entitled under a will must be in writing, supported by consideration, and executed “by all who are affected by its provisions.” Minn. Stat. § 524.3-912; *see, e.g., Swan v. Swan*, 308 Minn. 466, 466, 241 N.W.2d 817, 818 (1976) (holding that, to be enforceable, a purported agreement to settle an estate “must contain the elements of a valid contract,” and affirming district court’s decision not to enforce an agreement because the parties did not enter into a valid contract).

The Dolores estate asserts that, in light of section 524.3-912, the settlement of its claim against the Steven estate “must necessarily be conditioned upon reaching a redistribution agreement among all the estate’s heirs and beneficiaries.” But the Dolores estate does not point to any language in the MOU that imposes a condition on settlement

² The Dolores estate contends that, in the absence of a valid written agreement signed by all beneficiaries, Groth must distribute the Dolores estate as provided in Dolores’s will. *See* Minn. Stat. § 524.3-703(a) (2016) (providing that “[a] personal representative is under a duty to settle and distribute the estate of the decedent in accordance with the terms of any probated and effective will and applicable law”).

of the claim. More fundamentally, the enforceability of the MOU is not affected by section 524.3-912 because the MOU is an agreement between two estates; it is not an agreement among beneficiaries. Because Groth and Nancee were authorized to settle claims as personal representatives of two different estates, they had the necessary authority to enter into the MOU.

Whether the MOU also complies with section 524.3-912 and affects the distribution of the Dolores estate is not an issue before this court. The only issues on appeal are whether the parties entered into an enforceable settlement agreement and whether the district court abused its discretion in enforcing the MOU. Any objections that Thompson might have to the eventual distribution of the Dolores estate are not relevant to our decision today. Additionally, any objections Thompson may have may be asserted against the Dolores estate. *See In re Estate of Truhn*, 394 N.W.2d 864, 866-67 (Minn. App. 1986) (holding settlement agreement valid, despite failure to obtain signature from one beneficiary, but noting beneficiary could challenge settlement agreement).³

In sum, the district court did not abuse its discretion in enforcing the MOU because Groth was authorized to settle the Dolores estate's claims against the Steven estate.

³ In *Truhn*, the decedent had two sets of minor children, and a testamentary trust was established for each set of children. *Id.* at 865. A stipulated agreement apportioned awards to each set of children. *Id.* One of the children's mothers, a trustee, attempted to challenge the validity of the agreement because one child, who was 18 years old, did not sign the agreement. *Id.* at 867. This court held that, while the stipulation could be challenged by the child-beneficiary, it was not subject to challenge by appellant-trustee. *Id.* This court concluded that the stipulation was a valid contract, and affirmed the district court's decision approving the stipulated agreement. *Id.* Similarly, here, the district court determined that the MOU was valid and enforceable despite the parties' failure to obtain Thompson's signature.

B. The MOU and the Steven release are sufficiently definite and not materially incomplete.

Settlement agreements are contracts and thus require a definite offer and an acceptance, resulting in a “meeting of the minds on the essential terms of the agreement.” *TNT Props., Ltd.*, 677 N.W.2d at 100-01. “A binding contract can exist despite the parties’ failure to agree on a term if the term is not essential or can be supplied.” *Id.* at 101 (citing Restatement (Second) of Contracts § 201 cmt. d (1981)). Whether a settlement between the parties is “sufficiently definite and complete,” is “solely a matter of law for determination by the court.” *Triple B & G, Inc. v. City of Fairmont*, 494 N.W.2d 49, 53 (Minn. App. 1992). This court reviews the district court’s resolution of “matter[s] of law” de novo. *Id.* Whether a contract is ambiguous is a question of law that we also review de novo. *Yang v. Voyageur Houseboats, Inc.*, 701 N.W.2d 783, 788 (Minn. 2005). An appellate court will not consider the terms of a contract to be ambiguous simply because the parties dispute the proper interpretation. *Knudsen v. Transp. Leasing/Contract, Inc.*, 672 N.W.2d 221, 223 (Minn. App. 2003), *review denied* (Minn. Feb. 25, 2004).

The Dolores estate contends that the Steven release is incomplete because it does not include the disclaimer of interest in the Dolores homestead and other personal property that is contained in the MOU. The Dolores estate also asserts that the MOU is ambiguous and incomplete because the disclaimer provisions do not address how the homestead will be distributed under the Dolores will. The MOU states that the Steven estate “disclaims any interest in the homestead of Dolores Kukowski.” The MOU also states that “the house, boat, lot, and guns identified in the [attached] exhibit . . . shall not be included in [the]

Dolores estate for determining the distributive shares for the [Steven] estate.” The district court ruled that the MOU is sufficiently definite and binding on the parties and “Groth may rely on the Memorandum of Understanding if she ever needs to enforce the disclaimer.”

We agree with the district court that the disclaimer provisions in the MOU are sufficiently definite, complete, and unambiguous. In two separate paragraphs, the Steven estate disclaimed its interest in Dolores’s homestead, house, boat, lot, and the firearms listed in an accompanying exhibit. This language is not incomplete or ambiguous, even though it does not clearly specify how the disclaimed interest will be distributed under the Dolores will. *See TNT Props., Ltd.*, 677 N.W.2d at 100-01 (concluding that a settlement agreement was not incomplete even though it did not clearly specify the timing of installment payments).

In fact, in its brief to this court, the Steven estate stated that it has “disclaimed any interest in the real and personal property addressed in [the MOU] and that said real and personal property are to pass/be distributed to [Groth and Thompson], the other two heirs in” the Dolores estate. To the extent that the Dolores estate decides to enforce or clarify the MOU disclaimer, the estate can seek enforcement of the MOU in district court, an option that the estate has yet to pursue. *See Voicestream Minneapolis, Inc. v. RPC Props., Inc.*, 743 N.W.2d 267, 271 (Minn. 2008) (“[A] settlement agreement can be enforced by an ordinary action for breach of contract. . . . [and] agreements can also be enforced by motion in the original lawsuit.” (quotation and citation omitted)).⁴

⁴ Finally, the Dolores estate asserts that this case is similar to an unpublished opinion from this court. Unpublished opinions, however, are of limited value in deciding an appeal.

We conclude that, based on the record, the district court did not abuse its discretion in granting the Steven estate's request for enforcement of the MOU.

Affirmed.

Minn. Stat. § 480A.08, subd. 3(c) (2016) (stating that “[u]npublished opinions of the court of appeals are not precedential”); *Gen. Cas. Co. of Wis. v. Wozniak Travel, Inc.*, 762 N.W.2d 572, 575 n.2 (Minn. 2009) (stating that “the unpublished Minnesota court of appeals decision does not constitute precedent”).