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STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0365

In re: Estate of Mae Anderson, Deceased.

Filed August 27, 2018
Affirmed in part, reversed in part, and remanded
Bjorkman, Judge

Stevens County District Court
File No. 75-PR-10-343

Jonathan D. Wolf, Nicholas R. Delaney, Rinke Noonan, St. Cloud, Minnesota (for appellant Mark Anderson)

Jon C. Saunders, Casey Swansson, Anderson, Larson, Saunders, Klaassen & Dahlager, P.L.L.P., Willmar, Minnesota (for respondent Ronald Anderson)

Jason G. Lina, Fluegel, Anderson, McLaughlin & Brutlag, Chartered, P.A., Morris, Minnesota (for respondent Eugene Anderson)

Considered and decided by Halbrooks, Presiding Judge; Bjorkman, Judge; and Hooten, Judge.

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

BJORKMAN, Judge

In this probate appeal, appellant-beneficiary challenges the district court's denial of his request for attorney fees to defend his rights under a will and failure to award him statutory interest. We affirm the denial of attorney fees but reverse and remand for an award of interest under Minn. Stat. § 549.09, subd. 1(c)(2) (2016).

FACTS

Mae Anderson died testate on August 13, 2010, bequeathing all of her assets in equal shares to her four children: respondents Eugene and Ronald, and their siblings, Lloyd and Sherry.[1] At the time of her death, Mae owned 400 acres of farm land (property) in Stevens County, which Eugene's son, appellant Mark Anderson, had been renting for many years. Mae's will directs that Mark "be allowed to continue farming the land during the administration of my estate on the same terms and conditions under which he was renting the land at the time of my death," and further provides:

> b. In the event the estate elects to offer for sale the land which Mark . . . has been renting, that he be given an opportunity to purchase the land and a right of first refusal under which he may match the terms of an offer the estate otherwise intends to accept from another buyer.
>
> c. In the event my estate does not sell the land Mark . . . has been renting, I hereby express my desire that he be given a fair opportunity to purchase at such future time as all or part of the real estate shall be sold to someone outside of my heirs, as set forth in this Will, or their issue.

In November 2010, the district court ordered unsupervised administration of the estate and named Eugene as the personal representative (PR). Under Eugene's direction, Mark continued to rent the property for $75 per acre—even after the market rate rose to $200 per acre. Eugene put the property up for auction in August 2013, eventually accepting a bid of $1.6 million. Mark exercised his right of first refusal and purchased the property.

[1] Because all of the parties to this appeal have the same surname, their first names are used for convenience of reference.

In October 2014, Lloyd petitioned to remove Eugene as PR, alleging Eugene breached his fiduciary duty by failing to timely close the estate and by failing "to seek the highest value" for the property. Following a court trial in June 2015, the district court found that: Mark continued to pay rent of $75 per acre even after the market rate rose to $200 per acre, the property increased in value from $1.69 million to $3.04 million during the administration period, and expert testimony established that either selling the property in smaller parcels or holding an "open outcry" auction would have produced a higher sale price. Based on these and other findings, the district court concluded that Eugene breached his fiduciary duty as PR and good cause existed to remove him, the sale of the property to Mark was "affected by a substantial conflict of interest," and Ronald and Lloyd were entitled to attorney fees from the estate. The district court appointed Ronald as PR and declared the property sale to Mark void. This court affirmed the 2015 judgment. *In re Estate of Anderson*, No. A15-1513 (Minn. App. July 5, 2016). In a June 2017 posttrial order, the district court determined that the estate owed Mark $1.6 million for the property and $278,893.19 for expenses, less $108,300 Mark owed for rent from 2014 through 2017.

In November 2017, Mark moved to recover from Ronald or, alternatively, the estate $46,425.50 in attorney fees he incurred in this litigation. The district court denied the motion, rejecting Mark's assertion that his attorney's services contributed to the benefit of the estate. The court noted that Mark was allowed to rent the property at a below-market rate for an extended period, Eugene breached his fiduciary duty by selling the farm to Mark and by failing to timely wind up the estate, and Mark "obtained a direct benefit from the dilatory actions of" Eugene. And the district court rejected Mark's argument that he was

"innocent" in these transactions, observing that Mark and Eugene farmed collaboratively and lived in the same home. The district court also concluded that Mark "had a personal interest in sustaining the Will," and his reduced rent "did not preserve the major asset (the farm)." But the district court ordered the estate to satisfy its outstanding debt to Mark within 30 days, which the district court found to be "apparently $1,395,954.40," and, after 30 days, to pay interest on the remaining balance at the rate "that [Mark] is currently obligated to pay." Mark appeals.

D E C I S I O N

I. Mark is not entitled to recover attorney fees from the estate.

While this court generally applies a discretionary standard of review to denials of attorney fees, where, as here, the decision derives from "construction and application" of the probate statute, the issue is a question of law subject to de novo review. *In re Estate of Holmberg*, 823 N.W.2d 875, 876 (Minn. App. 2012), *review denied* (Minn. Nov. 27, 2012); *see In re Estate of Butler*, 803 N.W.2d 393, 397 (Minn. 2011) (in a probate matter, "[d]etermining the appropriate standard [to overcome a statutory presumption] . . . requires interpretation of a statute, which is a legal question subject to de novo review").

The probate statute provides, in relevant part, that

> when, and to the extent that, the services of an attorney for any interested person contribute to the benefit of the estate, as such, as distinguished from the personal benefit of such person, such attorney shall be paid such compensation from the estate as the court shall deem just and reasonable and commensurate with the benefit to the estate from the recovery so made or from such services.

Minn. Stat. § 524.3-720 (2016). As a named beneficiary under Mae's will, Mark was an "interested person" under the statute. Minn. Stat. § 524.1-201(33) (2016) (providing that "interested person" includes "heirs . . . beneficiaries and any others having a property right in or claim against the estate of a decedent"). Accordingly, the focus of our analysis is whether the services Mark's attorney performed "contribute[d] to the benefit of" Mae's estate.

Mark contends that he is entitled to recover attorney fees from the estate for two reasons. First, he asserts that his actions economically benefited the estate. Second, if they did not, he urges this court to broadly interpret "benefit" to include non-economic objectives, such as furthering Mae's testamentary intent. We have held "that as long as the services of the attorney for the interested person do not contribute solely to the benefit of the interested person, but also contribute to the benefit of the estate, attorney fees are recoverable under section 524.3-720." *Gellert v. Eginton*, 770 N.W.2d 190, 198 (Minn. App. 2009), *review denied* (Minn. Oct. 20, 2009); *see In re Estate of Torgersen*, 711 N.W.2d 545, 555 (Minn. App. 2006) (recognizing that public policy supporting statute is "that an estate as an entity is benefited when genuine controversies as to the validity or construction of a will are litigated and finally determined" (quotation omitted)), *review denied* (Minn. June 20, 2006). But we are not persuaded that the services of Mark's attorney benefited, in any way, a person or entity other than himself.

Mark identifies no direct economic benefit to the estate occasioned by his attorney's efforts. Indeed, the record establishes that Mark's legal actions vindicated his interests but caused the estate to incur legal expenses that depleted estate assets. Mark's legal actions

were borne out of his father's unreasonable delay in closing probate and Mark's desire to continue to rent the property at a discounted rate and purchase it at a deeply discounted price, which were both windfalls to him and of no economic benefit to the estate.

It is true that Mark's continued ability to rent the property at a below-market rate following Mae's death was consistent with the terms of her will. But we are not convinced that this expressed intent extends to a lengthy administration period. Mae's will also expressed the intent that the property be sold, with Mark having the right to match a third-party offer for the property if it was sold during probate. Ultimately, Mark's actions were not consistent with Mae's primary testamentary intent—to provide for her children—or the lesser intent to provide Mark with reduced rent and a right of first refusal with respect to the property. Because Mark has not persuaded us that his attorney's efforts benefited the estate in any way, he is not entitled to recover attorney fees under Minn. Stat. § 524.3-720.

II. Mark is entitled to statutory interest on the debt owed to him by the estate.

Interest on a judgment or award over $50,000 is controlled by Minn. Stat. § 549.09, subd. 1(c)(2), which provides that "the interest rate shall be ten percent per year until paid." In *Redleaf v. Redleaf*, a marriage-dissolution case, we concluded that "the district court does not have the discretion to ignore the unambiguous statutory mandate of Minn. Stat. § 549.09, subd. 1(c)(2)." 807 N.W.2d 731, 735 (Minn. App. 2011). We reasoned that the "statutory provision is unambiguous" and use of the mandatory term "shall" requires that interest be calculated on awards over $50,000 at the rate of ten percent. *Id*. at 733.

The district court's January 3, 2018 order awards Mark approximately $1.4 million from the estate. Because this amount exceeds $50,000, Mark is entitled to ten percent interest.[2] Accordingly, we reverse and remand the interest calculation to the district court.

Affirmed in part, reversed in part, and remanded.

[2] The estate does not dispute the applicability of Minn. Stat. § 549.09, subd. 1(c)(2), but contends that the issue of interest is outside the scope of our review. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) ("A reviewing court must generally consider only those issues that the record shows were presented and considered by the trial court in deciding the matter before it." (quotation omitted)). While the general issue of interest was raised in and decided by the district court, it was not decided with reference to section 549.09, and, apparently, the parties did not bring that statute to the court's attention. But we have discretion to address any issue in the interests of justice, Minn. R. Civ. App. P. 103.04, and are obliged "to decide cases in accordance with law," *State v. Hannuksela*, 452 N.W.2d 668, 673 n.7 (Minn. 1990). *See Greenbush State Bank v. Stephens*, 463 N.W.2d 303, 306 n.1 (Minn. App. 1990) (applying doctrine in a civil case), *review denied* (Minn. Feb. 4, 1991).