

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1682**

In re the Supervised Estate of: Brian Scott Short, Deceased.

**Filed August 26, 2019
Affirmed
Reilly, Judge**

Hennepin County District Court
File No. 27-PA-PR-15-1210

John G. Westrick, Savage Westrick, P.L.L.P., Bloomington, Minnesota (for appellant East Coast Test Prep LLC, d/b/a Achieve Test Prep)

John D. Reddall, James J. Kretsch, Kretsch Law Office, PLLC, Lakeville, Minnesota (for respondent/cross-appellant personal representative David Smits)

Considered and decided by Reilly, Presiding Judge; Johnson, Judge; and Hooten, Judge.

S Y L L A B U S

When determining whether to distribute assets or hold open an estate with a contingent claim, courts must apply a balancing test to weigh the interests of efficient administration of an estate against protection of the contingent claim, considering the following factors: (1) the nature of the claim being asserted before another tribunal; (2) the hardship on the estate of deferred distribution of principal or income; and (3) the adverse effect of refusing any asset withholding and thereby potentially impairing satisfaction of a meritorious claim.

OPINION

REILLY, Judge

Appellant East Coast Test Prep LLC, d/b/a Achieve Test Prep (ATP) filed a contingent claim against decedent's estate related to appellant's pending federal lawsuit. The merits of appellant's claim against the estate are still being litigated in federal court. ATP appeals the district court's decision to allow the distribution of income from decedent's estate before the federal litigation is finally resolved. The personal representative of the estate (the PR) cross-appeals, arguing that the district court erred by (1) converting administration of the estate from unsupervised to supervised, (2) denying the PR's request to disallow appellant's claim against the estate, and (3) barring the distribution of principal from the estate. We affirm.

FACTS

The decedent, Brian Short, died testate in September 2015. Before decedent's death, ATP sued decedent and his company, Allnurses.com, in federal district court.¹ ATP's lawsuit alleged, among other things, that Allnurses.com breached its terms of service by failing to remove internet posts about ATP that were false and defamatory (federal claim).

In October 2015, the probate court (district court) ordered an unsupervised administration of decedent's estate and appointed a PR. Due to ATP's federal claim against the PR, ATP filed a statement of unsecured claim against the estate, alleging the estate may

¹ After decedent's death, ATP substituted the PR of decedent's estate as a defendant in the federal lawsuit.

become indebted to ATP in an amount in excess of \$50,000 (contingent claim). The PR disallowed ATP's contingent claim. In order to protect its contingent claim against the estate, ATP petitioned for supervised administration of decedent's estate. The district court issued an order reserving its decision on whether to convert the estate to supervised administration until after the federal district court's decision on a then-pending motion to dismiss the PR and Allnurses.com as parties in the federal proceeding.

In January 2018, the federal district court dismissed all claims against the PR and Allnurses.com with prejudice, stating that "ATP alleges few specific facts in support of [its] allegations, and despite two years of trying it has discovered virtually no evidence that they are true." *E. Coast Test Prep LLC v. Allnurses.com, Inc.*, 307 F. Supp. 3d 952, 956 (D. Minn. 2018), *appeal docketed*, No. 18-3197 (8th Cir. Oct. 15, 2018). ATP appealed the federal district court's decision; that appeal is still pending in the Eighth Circuit Court of Appeals. *Id.* Based upon the federal district court's dismissal of all claims against the PR and Allnurses.com, the PR moved the district court to confirm its disallowance of ATP's contingent claim. In June 2018, after a hearing on the matter, the district court converted the estate to a supervised administration until ATP's federal claim is finally resolved in the federal litigation. The district court also denied the PR's request to confirm the disallowance of ATP's contingent claim against the estate and instead requested that the parties propose a sum to be reserved in the estate to protect ATP's contingent claim. ATP proposed that the estate set aside \$7.56 million; the PR proposed that the estate set aside no more than \$50,000.

The PR also moved the district court for permission to distribute estate income (not principal) to avoid adverse tax consequences. The district court held another hearing and, in October 2018, filed an order which allowed the PR to distribute estate income. However, the district court determined that it could not identify a reasonable amount for the estate to reserve because the amounts proposed by ATP and the PR were “dramatically different” and the court was “unable to independently determine the likelihood of success of ATP’s appeal.” The district court barred the PR from distributing any principal from the estate and ordered that the estate remain under supervised administration until the federal litigation is finally resolved.

The PR challenges the district court’s decision to allow the conversion of the estate to supervised administration, the district court’s denial of the PR’s request to confirm disallowance of ATP’s contingent claim and the decision to bar the distribution of principal. ATP challenges the district court’s decision to allow the distribution of income.

ISSUES

- I. Did the district court abuse its discretion when it granted ATP’s motion to convert the estate to supervised administration?
- II. Did the district court abuse its discretion when it denied the PR’s motion to confirm the PR’s disallowance of ATP’s contingent claim against the estate?
- III. Did the district court abuse its discretion when it granted the PR’s motion to allow the distribution of estate income but not principal?

ANALYSIS

Standard of Review

An appellate court reviews a district court's findings of fact concerning wills and trusts under a clearly erroneous standard and reviews a district court's conclusions of law de novo. *In re Estate of Neuman*, 819 N.W.2d 211, 215 (Minn. App. 2012); *see also In re Coleman*, 793 N.W.2d 296, 303 (Minn. 2011) (stating that factual findings will not be reversed "if they have evidentiary support in the record and are not clearly erroneous" (quotation omitted)). "Findings of fact are clearly erroneous only if the reviewing court is left with the definite and firm conviction that a mistake has been made." *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999) (quotation omitted). However, "[w]hen reviewing mixed questions of law and fact, we correct erroneous applications of law, but accord the district court discretion in its ultimate conclusions and review such conclusions under an abuse of discretion standard." *In re Estate of Sullivan*, 868 N.W.2d 750, 754 (Minn. App. 2015) (quotation omitted).

I. Conversion of the Estate to Supervised Administration

In its June 2018 order, the district court found that supervised administration of the estate was necessary to protect ATP's contingent claim, at least until ATP's federal claim is finally resolved in the federal courts. The PR argues that the district court improperly applied the law when it converted the estate to supervised administration.

Minnesota law prescribes the procedure to convert the unsupervised administration of an estate to a supervised administration. Minn. Stat. § 524.3-502 (2018). After an interested person or other authorized individual petitions the court for supervised

administration, notice is given to interested persons and the district court holds a hearing on the petition. *Id.* If the decedent's will directs unsupervised administration, as is the case here,² supervised administration shall be ordered only upon a finding that it is necessary for protection of persons interested in the estate. *Id.*

The PR argues that the district court misapplied the law and misplaced the burden on the estate to show that supervision is unnecessary. According to the PR, the existence of an appeal right related to a dismissed federal complaint is insufficient to support the district court's conversion of administration of the estate from unsupervised to supervised. We agree that the mere existence of a contingent claim might be insufficient to require supervised administration. Here, however, the district court carefully weighed the evidence before it and balanced the opposing parties' concerns.

The district court considered ATP's interest in the contingent claim, while noting that "the [e]state is now ready for distribution and the only remaining unresolved claim is [ATP's] claim." If the administration of the estate had remained unsupervised, the PR indicated his intent to distribute all of the estate assets. The court balanced ATP's interest against the potential hardship imposed on the estate from deferred distribution. In doing so, the district court "recognize[d] the result of the Federal [district court's] Order and the Federal Litigation"³ and found "no need for the [PR] to post a bond in this matter."

² Decedent's will, signed on April 27, 2009, requested: "unsupervised administration of my estate and that my estate be administered in as informal a manner as my personal representative deems advisable."

³ As noted earlier, the federal district court dismissed with prejudice all of ATP's claims, finding that two years of discovery had uncovered "virtually no evidence that [ATP's claims] are true." *E. Coast Test Prep LLC*, 307 F. Supp. 3d at 956.

Ultimately, the district court determined that supervised administration was necessary to protect ATP's interest until final resolution of the federal litigation. Accordingly, even if we may have reached a different conclusion, we see no abuse of discretion in the district court's determination that supervised administration was necessary in this case. *See Chamberlain v. Chamberlain*, 615 N.W.2d 405, 412 (Minn. App. 2000) (stating that when evidence supports the district court's discretionary determination, a reviewing court must affirm even if it would have reached a different conclusion), *review denied* (Minn. Oct. 25, 2000).

II. Denial of PR's Request to Confirm Disallowance of Contingent Claim

At the April 2018 hearing, the PR requested that the district court confirm the disallowance of ATP's contingent claim against the estate because ATP's federal claim had been dismissed by the federal district court. The district court reasoned that it would not confirm the PR's disallowance of the claim because "the Federal Litigation has not been finally resolved and that [ATP's] claim is still contingent and unliquidated pending appeal of the Federal order." The PR argues that the district court erred when it determined that it lacked authority to confirm disallowance of ATP's contingent claim.

The parties cite no relevant Minnesota caselaw. Instead, the parties look to authority from other jurisdictions, like Minnesota, that have adopted the Uniform Probate Code (UPC). "Because uniform laws are intended to encourage common interpretation among jurisdictions, caselaw from other UPC jurisdictions has substantial persuasive value." *In re Estate of Kotowski*, 704 N.W.2d 522, 526 (Minn. App. 2005) (citing *Johnson v. Murray*,

648 N.W.2d 664, 670 (Minn. 2002)), *review denied* (Minn. Dec. 21, 2005); *see also* Minn. Stat. § 645.22 (2018) (addressing construction of uniform laws).

One case in particular is instructive, *Powers Blvd. Assocs. Ltd. v. Estate of Reel*, 839 P.2d 516 (Colo. App. 1992). The *Powers* case is factually similar to the case before this court. In *Powers*, the Colorado Court of Appeals held that the district court did not abuse its discretion when it dismissed a claimant’s petition for allowance of a contingent claim against the estate—after the contingent claim was adjudicated on the merits in favor of the estate.⁴ *Id.* at 517. The decedent, Reel, was involved in a federal lawsuit prior to his death and his estate was substituted for him in the federal action after he died. *Id.* The federal court granted summary judgment in favor of the estate, but could not certify the order as final because claims against other parties survived the summary judgment motion. *Id.* Thereafter, the probate court dismissed the claimant’s motion for allowance of its claim. *Id.* The claimant appealed the district court’s decision and the Colorado Court of Appeals held that a district court “has broad discretion in determining whether such claims should be allowed, the amount of time to give a claimant to secure a judgment on the claim, and the amount or number of assets to be held in reserve for the contingency.” *Id.* at 518.

The *Powers* court cited to *In re Mellon*, 314 A.2d 500 (Pa. 1974), a case analyzing a district court’s decision to allow distribution of an estate’s assets notwithstanding a

⁴ Minnesota Statutes section 524.3-806(b) (2018) mirrors the relevant Colorado Statute, which provides that “[u]pon the petition of the personal representative or of a claimant in a proceeding for the purpose, the court may allow in whole or in part any claim or claims presented to the personal representative.” *See* Colo. Rev. Stat. § 15-12-806 (1987).

contingent claim against the estate.⁵ The *Mellon* court determined that district courts should consider the following factors when balancing the “prompt, orderly, and efficient administration of decedent’s estate” against the “interest in protecting the claims of creditors against [an estate]”:

(1) the nature of the claim being asserted before the other tribunal, (2) the hardship, if any, which deferred distribution of principal or income would impose on the estate or the individual or charitable beneficiaries, and (3) the adverse effect of refusing any withholding and thereby precluding satisfaction from estate assets of a possibly meritorious claim being adjudicated in another court.

Id. at 502-03. The *Powers* court adopted the balancing test as outlined in *Mellon* and provided:

When faced with similar situations in which contingent claims have forced the administration of an estate to be held open, other jurisdictions have applied a balancing test to determine the rights of the competing interests. In those jurisdictions, the court is required to consider the interests of the prompt, orderly, and efficient administration of an estate as against the protection of claims against the estate being asserted in other *fora*.

839 P.2d at 518. The *Powers* court concluded that it “must strike a proper balance between [the] conflicting goals . . . [and give] careful judicial circumspection and due consideration of all attending circumstances” and ultimately determined that the Colorado district court had not abused its discretion when it granted the estate’s motion to dismiss Powers’s petition. *Id.* (citation omitted).

⁵ Pennsylvania adopted the UPC in 1979, and therefore the *Mellon* court was interpreting a pre-UPC Pennsylvania statute.

Like Colorado’s probate code,⁶ the Minnesota probate code is to be “liberally construed and applied to promote the underlying purposes and policies,” which include “promot[ing] a speedy and efficient system for liquidating the estate of the decedent and making distribution to successors.” Minn. Stat. § 524.1-102 (2018). We find the analysis in *Powers* persuasive and conclude that a similar balancing test should be applied in cases addressing estate distribution in Minnesota.

Based on the record before us, we conclude that the district court considered and balanced the nature of the contingent claim, the potential adverse effects on the claimant, and the potential hardship to the estate from delaying distribution. When evidence supports the district court’s determination, we defer to the broad discretion of the district court. *Chamberlain*, 615 N.W.2d at 412. Accordingly, we affirm the district court on this issue.⁷

⁶ “Ultimately, the [Colorado] probate court is charged with maintaining a speedy, efficient, and exact system for settling estates and making distributions.” *Powers*, 839 P.2d at 517-18.

⁷ Citing the district court’s statement that it “could not disallow” ATP’s contingent claim against the estate, the PR asserts that the district court erred when it barred complete distribution of the estate assets based on its erroneous belief that it *could* not disallow ATP’s claim, that is that it did not have the authority to allow distribution of the estate’s assets. We believe that the PR’s assertion misreads the district court’s order. Citing *Powers*, the district court stated that, when addressing whether to allow distribution of estate assets when contingent claims exist, “other courts have looked to a balancing test” which includes analyzing the “nature of the claim being asserted, the protection of a creditor’s claim, the hardship imposed upon an estate or an individual distributee, and the court’s charge with promoting a speedy and efficient system for liquidation of an estate.” Because *Powers* unambiguously holds that a district court *may* (but need not) disallow a claim, we read the district court’s statement that it “could not disallow” ATP’s claim to indicate that it *would* not disallow ATP’s claim. See Minn. Stat. § 524.1-302 (b) (2018) (providing that the district court has “full power to make orders, judgments and decrees and take all other action necessary and proper to administer justice in the matters which come before it”). Because we read the district court’s analysis as informed by its resolution of the balancing test, rather than a lack of authority to disallow the claim, we reject the

III. Distribution of Income, But Not Principal

ATP claims that the lower court should not have allowed the distribution of the estate's income without knowing the total value of the estate. And the PR claims that the lower court should have allowed the distribution of the estate's principal. Pursuant to Minnesota Statutes section 524.3-504 (2018), the personal representative of a supervised estate is unable to make distributions to the ultimate beneficiaries without "prior order of the court." The district court is authorized to issue "[i]nterim orders approving or directing partial distributions, sale of property or granting other relief . . . at any time during the pendency of a supervised administration on the application of the personal representative or any interested person." Minn. Stat. § 524.3-505 (2018).

The district court has broad power to "administer justice" when supervising a probate proceeding. Minn. Stat. § 524.1-302. And, as noted earlier, the probate code is to be "liberally construed and applied to promote the underlying purposes and policies," which include "promot[ing] a speedy and efficient system for liquidating the estate of the decedent and making distributions to successors." Minn. Stat. § 524.1-102.

ATP argues the district court should have determined the value of the estate in order to properly calculate a "reasonable" amount to withhold. However, ATP does not cite to any relevant legal authority to support its assertion that valuation was required. Here, the district court carefully balanced the hardship to the estate of retaining income against ATP's interest in protecting the contingent claim by not permitting the distribution of the

PR's argument that is based on what the PR asserts was the district court's improper limitation of its authority.

estate's principal. The district court found that "by distributing the income of the [e]state to the devisees, the [e]state avoids the substantial adverse tax consequences of retaining income within the [e]state . . . [because] income distribution would reduce the [e]state's taxable income by transferring income to devisees whose tax brackets are more favorable." The court applied the *Powers* balancing test, weighing the nature of the claim being asserted and protection of a potential creditor's claim against the hardship imposed to the estate or individual distributees, keeping in mind the court's charge to promote a speedy and efficient system for liquidating estates. The district court found:

When applying a balancing test to this case, the court finds that a total suspension of the distribution of [e]state assets is unreasonable given the fact that ATP has not been successful in its case at the trial court level, and the fact that an appeal will likely delay distributions even longer. The court also recognizes the adverse tax consequences of allowing income to accumulate to principal in the [e]state. Finally, the court recognizes the fact that the [d]ecedent died over three years ago and that there has been no conclusion of the estate or distribution of assets to the devisees. As such, the court finds it is both reasonable and equitable to allow distribution of income from the [e]state to the [e]state's devisees.

We affirm the district court's carefully considered decision to make a partial distribution of the estate's income, but not the principal.

D E C I S I O N

Because the district court did not abuse its discretion by converting the estate to supervised administration, allowing income distribution, and denying the disallowance of ATP's claim against the estate, we affirm.

Affirmed.