STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0261

In re the Estate of: Norman Sebert Larson, Deceased.

Filed January 13, 2020
Affirmed
Reyes, Judge

Otter Tail County District Court
File No. 56-PR-16-3860

Michael R. Ruffenach, Ruffenach Law Office, Laporte, Minnesota (for appellant Allen Larson)

Kendra E. Olson, Pemberton Law, P.L.L.P., Fergus Falls, Minnesota (for respondents)

Considered and decided by Connolly, Presiding Judge; Bjorkman, Judge; and Reyes, Judge.

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

REYES, Judge

Appellant argues on appeal that the district court (1) improperly determined that decedent executed a valid will despite violations of nursing-home policy and (2) clearly erred by finding decedent had testamentary capacity despite his poor physical condition and severe depression. We affirm.

FACTS

Decedent Norman Sebert Larson (decedent) was diagnosed with metastatic renal-cell cancer in mid-to-late January 2014. He entered a nursing home on January 21, 2014,

after his doctor found him too weak to care for himself at home. Decedent executed a will on January 24, 2014, and died on January 30, 2014, at the age of 81.

Decedent did not marry and had no children. He had two brothers, Duane Larson and Maynard Larson.[1] Appellant Allen Larson is decedent's nephew and the son of Duane, who predeceased decedent. Respondent Debra Larson is decedent's sister-in-law and the widow of Maynard, who passed away after decedent's death but before these proceedings. Respondent Myron Wicklund, president of respondent Leaf Mountain Lutheran Church (LMLC) at the time decedent executed his will, had known decedent since Wicklund was approximately eight years old. Decedent attended church services at LMLC every Sunday and rang the bell weekly to begin services there for nearly 40 years. Decedent donated $62,000 to the church several years prior to his death for a new dining area. He had also talked with Mark Wicklund, Myron Wicklund's son and current president of LMLC, years before his death about donating land to the church.

Under his will, decedent devised all of his real property and the remainder of his estate to LMLC. His will reflected his intent to name Maynard as the beneficiary on his Thrivent Financial accounts, with the exception of one account designated to LMLC. He completed these beneficiary designations outside of the will. The will also referenced his wish to transfer his residence and four acres of property to Allen and stated that he wanted LMLC to complete the deed to transfer the interest if decedent could not do so prior to his death. LMLC did so.

[1] Because the parties and related individuals have the same last name, this opinion will use the first names of members of the Larson family in subsequent references.

Attorney Adam Licari drafted decedent's will and witnessed decedent signing it. Licari testified that he talked with decedent about the will outside the presence of any of the respondents to make sure that the will accurately reflected decedent's wishes. After confirming that it did, Licari invited visitors back into the room, and decedent executed the will. Nurse Mandi Larson,[2] a registered nurse at the nursing home, served as the other witness. She completed a cognitive analysis of decedent the day he signed his will, which indicated that his short- and long-term memory were not problematic and that he had an "alert" level of consciousness, adequate hearing, capacity to understand others, and no cognitive impairment. She also completed a mental-health assessment of decedent that day, which categorized him as severely depressed. Banker Robert Reinbold, from First National Bank, served as the notary for decedent's will. He had known decedent as a bank customer for more than 20 years.

In December 2016, Allen filed a petition for formal adjudication of intestacy, to which respondents objected, citing a valid will. The case proceeded to a court trial. Licari, nurse Larson, and Reinbold each testified that decedent appeared to be of sound mind when he executed his will. The district court found the will to be a self-proved will.[3] It found that Allen did not present sufficient evidence to overcome the rebuttable presumption of decedent's testamentary capacity from the self-proved will. This appeal follows.

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[2] No relation to decedent or appellant.

[3] A self-proved will must be "(1) in writing; (2) signed by the testator . . . ; and (3) signed by at least two individuals, each of whom signed within a reasonable time after witnessing . . . the signing of the will." Minn. Stat. § 524.2-502 (2018). It must also meet the requirements in Minn. Stat. § 524.2-504 (2018).

D E C I S I O N

Allen admits that decedent had a self-proved will. He instead argues that the will is invalid because (1) the nursing home allowed non-immediate family members to visit decedent and (2) decedent lacked testamentary capacity. We address each claim in turn.

Whether a will is properly executed is a question of fact that we review for clear error. *In re Estate of Sullivan*, 868 N.W.2d 750, 752 (Minn. App. 2015) (citing *Johnson v. Heltne*, 214 N.W.2d 224, 227 (Minn. 1974)). We will not overturn the district court's findings unless, based on a review of the record, we are "left with the definite and firm conviction" that a mistake has been made. *In re Estate of Anderson*, 384 N.W.2d 518, 520 (Minn. App. 1986) (quoting *In re Estate of Congdon*, 309 N.W.2d 261, 266 n.7 (Minn. 1981)). Any person of sound mind and at least 18 years old may make a will. Minn. Stat. § 524.2-501 (2018). A self-proved will creates a conclusive presumption that the signature requirements for execution were met and a rebuttable presumption that other requirements, such as competency of the testator, were met. Minn. Stat. § 524.3-406(b) (2018); *In re Estate of Zeno*, 672 N.W.2d 574, 578 (Minn. App. 2003). The party challenging the validity of a will bears the burden of proof. Minn. Stat. § 524.3-407 (2018).

I. The district court properly concluded that alleged violations of nursing-home policy did not invalidate the will.

Allen claims that nurse Larson's failure to follow nursing-home regulations and state and federal law by allowing non-immediate family members to visit decedent "tainted" and invalidated decedent's will. We disagree.

We review de novo Allen's claim that the will is invalid as a matter of law due to these visits. *See Sullivan*, 868 N.W.2d at 752. However, Allen does not cite to any legal authority to support his theory that these visits violated any policy or law[4] or that such a violation would invalidate a will. We therefore decline to address the issue. *See State Dep't of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997). Allen's claim fails.

II. The district court did not clearly err by finding that decedent had testamentary capacity.

Allen next argues that the district court did not have sufficient evidence on which to base its determination that decedent had testamentary capacity because of decedent's severe medical conditions and depression. We are not persuaded.

As an initial matter, Allen argues that the district court should not have allowed in lay testimony from testator's lawyer, banker, and nurse regarding decedent's mental capacity at the time he signed his will. Allen did not object to this testimony before the district court. We do not review evidentiary rulings on which a party failed to object in district court and failed to make a motion for a new trial assigning error to the ruling. *Sauter v. Wasemiller*, 389 N.W.2d 200, 201 (Minn. 1986). We therefore do not address this claim.

[4] Allen provided a copy to the district court of the Federal Bill of Rights for Residents in Medicare/Medicaid Certified Skilled Nursing Facilities or Nursing Facilities. The document specifically provides for visitation rights according to a nursing-home resident's preferences, including visitation by family or friends. *See* Minn. Dep't of Health, *Federal Bill of Rights for Residents in Medicare/Medicaid Certified Skilled Nursing Facilities or Nursing Facilities* (2019). Allen does not claim that decedent limited his visitors to immediate family members.

We review a district court's finding of testamentary capacity for clear error. *In re Estate of Torgersen*, 711 N.W.2d 545, 550 (Minn. App. 2006), *review denied* (Minn. Jun. 20, 2006). We view all evidence and inferences from the evidence in the light most favorable to the district court's decision. *Anderson*, 384 N.W.2d at 520. District court findings of testamentary capacity are final on appeal when the underlying evidence is conflicting. *In re Olson's Estate*, 35 N.W.2d 439, 444 (Minn. 1948). We give great deference to findings based on credibility determinations. *See Alam v. Chowdhury*, 764 N.W.2d 86, 89 (Minn. App. 2009).

In determining testamentary capacity, we consider "(1) the reasonableness of the property disposition; (2) the testator's conduct within a reasonable time before and after executing the will; (3) a prior adjudication of the testator's mental capacity; and (4) expert testimony about the testator's physical and mental condition." *Torgersen*, 711 N.W.2d at 552 (citing *Anderson*, 384 N.W.2d at 520). Less mental capacity is required to make a will than is required to contract generally, "[a]nd even a person under a conservatorship may have sufficient capacity to execute a will." *Id.* at 554.

The district court considered these factors and found that decedent had testamentary capacity. For the first factor, it found credible Licari's testimony that he spoke with decedent about the terms of the will and that decedent confirmed that they met his wishes, which showed that decedent knew of his property and could rationally distribute it. It further found that decedent had previously indicated his desire to gift land to LMLC, showing the reasonableness of the property distribution in his will. For the second factor, it credited nurse Larson's testimony that she would be a witness to one of her patient's

wills only if she believed they had the intent and capacity to execute a will. It also credited Reinbold's testimony that he notarized the will only after concluding that decedent had the capacity to execute it. Neither Licari, nurse Larson, nor Reinbold had any pecuniary interest in the disposition of the will. The district court did not make findings on factors three or four because they did not apply.

The district court did not find credible the testimony of nursing-home nurse Deneice Stewart, the half-sister of Allen's wife, who provided the only evidence in support of Allen. It found that Stewart's testimony that decedent lacked the ability to understand and respond correctly at certain times of the day and that someone in hospice or in a nursing home is not physically or mentally able to sign a will was inconsistent with paperwork Stewart completed about decedent and with other testimony about decedent during the same period. It concluded that Allen did not prove that decedent lacked testamentary capacity.

Allen argues that the district court clearly erred because the substantial weight of the evidence shows that decedent's myriad physical ailments, including a possible coma, stroke, and kidney failure, limited decedent's mental capacity. Allen argues that the district court therefore should have made findings about whether decedent had these conditions. These arguments fail.

First, to the extent that Allen is challenging witness credibility, we defer to the district court's determinations. *See Alam*, 764 N.W.2d at 89. Second, while decedent's medical records indicate that he suffered from severe medical conditions, neither hospital nor nursing-home staff diagnosed him with any of the above conditions. Third, Allen provides no legal authority for this proposition. Fourth, Allen misapplies the burden of

proof on a self-proved will: respondents do not need to prove that a person with decedent's medical conditions can still have testamentary capacity. *See* Minn. Stat. § 524.3-407. Rather, Allen had the burden in the district court of persuading it that decedent lacked testamentary capacity, see *id.*, and his burden in this court is to show that the district court's finding of testamentary capacity is clearly erroneous. *Torgersen*, 711 N.W.2d at 550.

Decedent's medical records also support the district court's finding. Nurse Larson's evaluation indicated decedent could understand those around him and that he was not cognitively impaired. Other health-care workers also completed medical records several days before and after decedent executed his will indicating that he was alert and oriented. This remained the case until he "decline[ed] quickly" on January 28, 2014, the day before Allen's only visit to decedent in the nursing home. None of decedent's medical records indicates that he had any cognitive, as opposed to physical, impairment when he signed his will.

Finally, Allen argues that a person like decedent who is severely depressed lacks testamentary capacity. But, as respondent's counsel aptly noted, there is a difference between mental capacity and mental health. Mental health does not determine testamentary capacity, and Allen points to no cases that support that proposition. *See, e.g.*, *In re Healy's Estate*, 68 N.W.2d 401, 403 (Minn. 1955); *Torgersen*, 711 N.W.2d at 552-54. The record supports the district court's finding that Allen failed to meet his burden of proving that decedent lacked testamentary capacity. Therefore, the district court did not clearly err by finding decedent's will valid and allowing decedent's estate to go to probate.

Affirmed.