STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0139

Theresa K. Williams, Personal Representative of the
Estate of Kristen Nicole Kuether,
Respondent,

vs.

William M. Kuether,
Appellant.

Filed November 2, 2020
Affirmed
Worke, Judge

Anoka County District Court
File No. 02-CV-17-831

Jacob B. Sellers, Matthew S. Greenstein, Greenstein Sellers PLLC, Minneapolis, Minnesota (for respondent)

Darren Knight, Knight Law Office PA, Wayzata, Minnesota (for appellant)

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

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

WORKE, Judge

Appellant challenges the district court's grant of summary judgment in favor of respondent-personal-representative on her claims for conversion and unjust enrichment

arising out of appellant's failure to provide the decedent her share of proceeds from the sale of a family business. We affirm.

FACTS

Kuether Distributing Company (KDC) is a Minnesota corporation. In 2002, brothers, William C. Kuether and David Kuether, owned all KDC shares. In August 2002, KDC, William C. and David entered into a share purchase agreement (SPA), which provided how shares could be effectively transferred. The SPA was binding on subsequent shareholders.

In 2006, KDC sold virtually all of its assets to Capitol Beverage Sales (Capitol). The sale was financed by KDC pursuant to a promissory note by Capitol in favor of KDC in the principal amount of $5,700,000.

In 2012, William C. passed away. His will provided that 60% of his interest in KDC was to be distributed to his son, appellant William M. Kuether, and 40% to his daughter, Kristen Nicole Kuether. In December 2013, appellant, Kristen, and David entered into a settlement agreement in which David transferred his interest to appellant and Kristen. Thereafter, appellant had a 60% interest in KDC, and Kristen had a 40% interest in KDC.

In 2014, appellant, as president and CEO of KDC, entered into a prepayment agreement with Capitol—the note had a $2,150,000 balance, but KDC accepted $1,864,287 in full satisfaction. Appellant did not discuss the agreement with Kristen. In July 2014, Capitol wired the payoff amount to KDC's account, and appellant withdrew all but $39,287. Appellant did not give any of the payoff amount to Kristen.

On September 17, 2014, Kristen passed away. On October 13, 2014, an informal probate action was commenced; respondent Theresa K. Williams, Kristen and appellant's mother, was appointed the personal representative of Kristen's estate. Respondent began locating Kristen's assets and paying creditors. Respondent requested records of Kristen's interest in KDC from appellant, but he declined to provide any information. After investigating, respondent believed that Kristen's estate was entitled to 40% of the payoff amount from Capitol. Respondent contacted appellant requesting Kristen's share of the payoff. Appellant refused to pay the estate, prompting respondent to sue appellant for conversion and unjust enrichment, alleging $730,000 in damages—Kristen's 40% of the payoff amount.

The parties filed cross-motions for summary judgment. In an affidavit, appellant asserted that Kristen voluntarily transferred her interest in KDC to KDC before her passing because she wanted a monthly income stream. A promissory note, dated January 1, 2014, indicates that Kristen would receive $380,000 with interest, collected in monthly payments of $7,500, until December 31, 2016. Appellant claimed that two payments had been made to Kristen. Appellant claimed that as of January 1, 2014, he was the sole shareholder; thus, when he executed the agreement with Capitol, Kristen did not own any shares, and respondent had no right to recover on behalf of Kristen's estate.

On November 26, 2019, the district court granted respondent's motion for summary judgment. The district court determined that the SPA included a procedure for transfers of shares of stock and that the purported transfer of Kristen's shares "did not comply with the procedures required by the SPA." The district court concluded that appellant "unilaterally

extracted" the $1,825,000 payoff, and by doing so, was "unjustly enriched in the amount of $730,000." The district court awarded Kristen's estate $730,000. This appeal followed.

D E C I S I O N

Standing

Appellant first argues that respondent did not have standing to challenge the purported stock transfer. Appellate courts review the issue of standing de novo. *In re Gillette Children's Specialty Healthcare*, 883 N.W.2d 778, 784 (Minn. 2016).

Under Minnesota law, standing is acquired in two ways: suffering of an injury-in-fact or by statute. *Id.* at 783-84. "By Minnesota statute, the personal representative has standing to assert claims on behalf of the decedent's estate." *Laymon v. Minn. Premier Props., LLC*, 903 N.W.2d 6, 13 (Minn. App. 2017) (quotation omitted), *aff'd*, 913 N.W.2d 449 (Minn. 2018). "A personal representative is under a duty to settle and distribute the estate of the decedent . . . consistent with the best interests of the estate." Minn. Stat. § 524.3-703(a) (2018). "[A] personal representative of a decedent domiciled in this state at death has the same standing to sue and be sued in the courts of this state and the courts of any other jurisdiction as the decedent had immediately prior to death." *Id.* (c) (2018).

Appellant claims that respondent lacks standing because Kristen did not suffer any damages because she transferred her interest in KDC. But respondent's standing is acquired by statute. *See id.* And as respondent points out, appellant's assertion that Kristen transferred her interest in KDC is a defense to the estate's claims and does not preclude respondent from having standing to raise the claims. *See Schiff v. Griffin*, 639 N.W.2d 56,

59 (Minn. App. 2002) (stating that standing focuses on the party and not on the issues that the party anticipates raising).

This court has stated that "[s]tanding is a low hurdle because [one] need only allege [its basis]." *In re Appeal of Selection Process for Position of Electrician*, 674 N.W.2d 242, 247 (Minn. App. 2004), *review denied* (Minn. Apr. 20, 2004). "Essentially, a potential litigant must allege injury in fact, or otherwise have a sufficient stake in the outcome, to have a court decide the merits of a dispute." *Id.* at 246-47 (quotation omitted).

Here, respondent sought to determine whether Kristen's estate included shares in KDC. It was not unreasonable for respondent to believe that Kristen held an interest in KDC. Just two years before her passing, Kristen inherited 40% of William C.'s shares in KDC. Then, just eight months before she passed, Kristen and appellant purchased David's interest in KDC. When appellant was unwilling to provide respondent information related to Kristen's financial interest in KDC, she commenced the lawsuit to determine whether Kristen's estate included the asset. Respondent had a statutory duty to settle Kristen's estate. *See* Minn. Stat. § 524.3-703(a). And in doing so, she had standing to sue on behalf of the estate. *See id.* (c).

Summary judgment

Appellant next argues that the district court erred in granting summary judgment because it relied on a "hyper-technical" reading of the SPA.

"A motion for summary judgment shall be granted when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to a judgment

as a matter of law." *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). A genuine issue of material fact exists if a rational trier of fact, considering the record as a whole, could find for the nonmoving party. *Frieler v. Carlson Mktg. Grp., Inc.*, 751 N.W.2d 558, 564 (Minn. 2008). No genuine issue of material fact exists "when the nonmoving party presents evidence which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the nonmoving party's case to permit reasonable persons to draw different conclusions." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997).

Here, the district court determined that no genuine issue of material fact existed based on its reading of the SPA. The district court determined that the purported transfer was null and void because it did not comply with the specific procedure for share transfers provided in the SPA.

There is no suggestion that the SPA is ambiguous. In construing contracts, this court looks to the language of the contract to determine the parties' intent. *Dykes v. Sukup Mfg. Co.*, 781 N.W.2d 578, 582 (Minn. 2010). When a contract's language is unambiguous, this court enforces the agreement of the parties as expressed in the language of the contract. *Id.* "If a contract is unambiguous, the contract language must be given its plain and ordinary meaning, and shall be enforced by courts even if the result is harsh." *Denelsbeck v. Wells Fargo & Co.*, 666 N.W.2d 339, 346-47 (Minn. 2003) (quotation omitted).

Article 2.1 of the SPA provides that any transfer that is not in "accordance with the provisions of [the SPA] . . . will be null and void." Under Article 3.1, any shareholder

intending to transfer shares must notify the corporation and other shareholders of his/her intent to transfer in writing, including the number of shares intended to be transferred and to whom. Then, under Article 3.2, for 30 days, the remaining shareholders are granted a right to purchase all or a portion of the shares intended to be transferred. The remaining shareholders must provide in writing their intent to exercise or decline the option to purchase. If shareholders decline to purchase any shares, the corporation is then granted the right to purchase the shares and must make the intention to do so in writing. Additionally, under Article 7, "[t]he purchase price of any [s]hares acquired in a sale pursuant to [the SPA] shall be paid in cash or certified funds" on the closing date, which is to be no later than thirty days after the expiration of the last applicable option period.

The parties agree that this procedure was not followed. The parties agree also that the SPA was binding on appellant and Kristen. Appellant asserts that when there were only two sibling shareholders, and they both agreed to the transfer, they did not have to follow the procedure. But fatal to appellant's assertion is that when the SPA was executed in August 2002, there were only two sibling shareholders, William C. Kuether and David Kuether. The SPA states that the agreement was between KDC and "William C. Kuether and David J. Kuether . . . who are the owners of all the issued and outstanding shares . . . of the Corporation." And the SPA nowhere exempts from its requirements the sale of stock back to the company or remaining shareholders. Thus, the failure to strictly follow the procedure for transferring shares of stock renders the purported transfer null and void, and no genuine issue of material fact exists.

Because the purported transfer was null and void, appellant did not own 100% interest in KDC when he retained the payoff amount from Capitol. *See DLH*, 566 N.W.2d at 71 (stating that conversion occurs when one willfully interferes with the personal property of another "without lawful justification," depriving the lawful possessor of "use and possession"). As a result, appellant was unjustly enriched in the amount of $730,000, representing Kristen's 40% of the payoff amount. *See Schumacher v. Schumacher*, 627 N.W.2d 725, 729 (Minn. App. 2001) ("In order to establish a claim for unjust enrichment, the claimant must show that another party knowingly received something of value to which he was not entitled, and that the circumstances are such that it would be unjust for that person to retain the benefit."). The district court did not err by granting summary judgment in respondent's favor.

Affirmed.