

*This opinion is nonprecedential except as provided by  
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A21-0543**

In re the Supervised Estate of: Delbert W Waara, Deceased.

**Filed January 31, 2022  
Reversed and remanded  
Bryan, Judge**

Hennepin County District Court  
File No. 27-PA-PR-04-1430

Michael Kemp, Paul D. Funke, Hansen, Dordell, Bradt, Odlaug & Bradt, P.L.L.P., St. Paul,  
Minnesota (for appellant John Rodriguez)

Stewart C. Loper, Stewart C. Loper, P.A., Minneapolis, Minnesota (for respondent Glen  
Waara)

Considered and decided by Bryan, Presiding Judge; Smith, Tracy M., Judge; and  
Rodenberg, Judge.\*

**NONPRECEDENTIAL OPINION**

**BRYAN**, Judge

In this probate case, appellant argues that the district court erred by allowing respondent to make an objection in 2018 to the value of an item listed in the inventory of the estate, which was filed in 2006. We agree with appellant and conclude that the 2006 value became final in the absence of respondent's objection or appeal at that time. Therefore, we reverse and remand.

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\* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

## FACTS

Delbert W. Waara died intestate in 2004. Delbert Waara's surviving spouse, Mary Lou Waara, petitioned for appointment as personal representative of her husband's estate. Mary Lou Waara and Delbert Waara had one child together, respondent Glen Waara, who was an adult at the time of Delbert Waara's death. Mary Lou Waara also had three other sons, one of whom is appellant John Rodriguez. The district court scheduled the matter for a final probate hearing and mailed notices of the hearing to Mary Lou Waara and Glen Waara. After the hearing, on December 20, 2004, the district court appointed Mary Lou Waara as the personal representative of Delbert Waara's estate.

On September 13, 2006, Mary Lou Waara filed several documents closing the probate matter. She submitted the inventory of Delbert Waara's estate, which included just two items: (1) "4,863 Issued Shares of Graco, Inc. Common Stock" valued at \$31.62 per share for a total of \$153,768.06; and (2) \$200 of personal property described as "[h]ousehold goods, furniture and miscellaneous personal property." Mary Lou Waara declared that "the Inventory and . . . its representations are true and complete," and that the two items were "a true and correct inventory at date of death values of all the property of the Estate, both real and personal, which has come into [her] possession as Personal Representative."

Mary Lou Waara also submitted a final account on September 13, 2006, which included the same two items and the same values for each. Under the heading "Interim Distributions to Devisees and Heirs," Mary Lou Waara listed \$200 in personal property and "4,863 Issued Shares of Graco, Inc. Common Stock," valued at \$153,768.06. On this

document, Mary Lou Waara again declared the representations and contents to be true and complete. Mary Lou Waara also filed a receipt for assets by distributee on September 13, 2006, in which she “acknowledge[d] receipt from the Personal Representative of this Estate, of the following assets in full: 4,863 Issued Shares of Graco, Inc. Common Stock,” valued at \$153,768.06 and \$200 in personal property. Mary Lou Waara also filed a statement to close the estate, in which she attested that she “[f]ully administered this Estate” and “[i]nventoried the assets of the Estate and distributed them to the persons entitled to them.”

At no point did anyone, including Glen Waara, object to the inventory, dispute any of the documents filed or statements contained therein, or otherwise challenge the administration or distribution of Delbert Waara’s estate. Nor was any appeal taken from any order of the district court. Beginning in 2006, statements and tax documents regarding the Graco stock (later admitted into evidence at trial) reflect the owner of the stock as “Mary Lou Waara Personal Representative Est Delbert Waara.”

On July 30, 2015, Mary Lou Waara died, and Rodriguez was subsequently appointed personal representative of Mary Lou Waara’s estate. While handling Mary Lou Waara’s estate, Rodriguez discovered that Mary Lou Waara transferred the Graco stock to herself in her capacity as Delbert Waara’s personal representative, but she had not retitled the assets to reflect her ownership of them in her individual capacity. On May 3, 2018, Rodriguez filed a petition to be formally appointed as successor personal representative for Delbert Waara’s estate for the purpose of retitling the assets in Mary Lou Waara’s name as an individual. Only then could Rodriguez administer Mary Lou Waara’s estate as her

personal representative. In the petition, Rodriguez observed that after administrative expenses, the total value of Delbert Waara's estate according to the 2006 document was less than \$150,000.

On July 13, 2018, the district court appointed Rodriguez as successor personal representative for Delbert Waara's estate. On July 31, 2018, Rodriguez submitted a supplemental inventory, showing the same information as the 2006 inventory, including the same two items: (1) "4,863 Issued Shares of Graco, Inc. Common Stock," with a "Fair Market Value" of \$153,768.06; and (2) \$200 in personal property. On July 31, 2018, Rodriguez also filed a supplemental final account. This document listed the two items and also included an "asset adjustment" of \$861,863.94, reflecting the 2018 value of the Graco stock. On July 31, 2018, Rodriguez also filed a "Petition to Allow Final Account, Settle and Distribute Estate," requesting distribution of 100% of the two items to Mary Lou Waara's estate.

The district court scheduled the matter for a final probate hearing, and on October 16, 2018, Glen Waara objected to the supplemental final account. Glen Waara objected because the stock was incorrectly valued on the 2006 inventory.<sup>1</sup> Glen Waara also objected to the requested distribution of 100% of the stock to Mary Lou Waara's estate because the 2018 value of the stock exceeded \$150,000. Rodriguez moved for summary judgment, arguing that Glen Waara's objection to the value of stock in the 2006 inventory was

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<sup>1</sup> The parties agree that the stock price listed on the 2006 inventory was inaccurate. They agree that the total value of the 4,863 shares of stock was actually \$196,562.46. The parties also agree that, when including accrued dividends, the total value in the 2006 inventory should have been stated as \$207,504.21.

untimely and barred as a matter of law. The district court denied the motion, and the case proceeded to trial.

Rodriguez and Glen Waara testified at the trial. Rodriguez acknowledged that Mary Lou Waara never retitled the stock, but received dividend checks during her lifetime. Rodriguez also agreed that Glen Waara correctly valued the stock as of the date of Delbert Waara's death as \$207,504.21. Glen Waara acknowledged that he did not object to the 2006 final account at the time. In August 2019, the district court revalued the Graco stock and proceeded to redistribute it. The parties disputed how the redistribution should be calculated.<sup>2</sup> After submission of a motion for amended findings, several amended final accounts, and amended objections, the district court issued its third amended order in March 2021. Rodriguez appeals.

## **DECISION**

Rodriguez argues that Glen Waara's objection to the supplemental final account is time-barred. We agree. Because Glen Waara did not object to or timely appeal the value of the Graco stock listed in the 2006 inventory, the 2006 value became final, and the district court erred in granting the objection.

Generally, courts enforce the finality of probate decisions:

Final decrees of the probate court are of great importance . . . .  
It is to be presumed that they express the deliberate judgment  
of that court upon the construction of wills where such direct  
the disposition of property. Such decrees should not be  
disturbed upon the mere say-so of the probate judge, years after

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<sup>2</sup> On appeal, Rodriguez also challenges the district court's decision to use the 2018 value of the Graco stock to conclude that the estate exceeded \$150,000. Given our decision below, we need not address appellant's challenge to the redistribution of the estate.

made . . . because there had been a previous order made without proper consideration, and hence erroneous.

*In re Turner's Est.*, 233 N.W. 305, 306 (Minn. 1930), *quoted in In re Est. of Nordlund*, 602 N.W.2d 910, 913 (Minn. App. 1999), *rev. denied* (Minn. Feb. 15, 2000).

The United States Supreme Court has likewise emphasized finality in probate cases to avoid endless litigation:

If the determination of the probate court was wrong, [the heir's] remedy was to appeal from that determination. The heirs were entitled to one day in court, but not to two. When a probate court with jurisdiction over property for purposes of administration, and for purposes of sale in certain cases, orders and confirms a sale of the same, it is the right and duty of an heir to litigate the propriety of such orders in that proceeding. The heir cannot sit by, permit the sale to be made, and then bring another and a collateral action in another court to litigate again the propriety of the sale, and to procure a decree declaring it to be void. Such a practice would place no end to litigation.

*Doran v. Kennedy*, 237 U.S. 362, 368 (1915), *quoted in Bengtson v. Setterberg*, 35 N.W.2d 623, 629 (Minn. 1949) (rejecting collateral attack on a probate distribution and stating that the decree of a probate court is binding “whether right or wrong” unless reversed or modified on appeal); *see also Loo v. Loo*, 520 N.W.2d 740, 743-44 (Minn. 1994) (noting that “the underlying principle that an adjudication on the merits of an issue is conclusive, and should not be relitigated, clearly applies” even when *res judicata*, collateral estoppel, and law of the case do not apply “in a technical sense”); *Rickert v. Wardell*, 170 N.W. 915, 916 (Minn. 1919) (rejecting collateral attack on a probate distribution and stating that the decree of the probate court—even if erroneous—is “binding and conclusive until reversed on appeal or set aside by some proper proceeding”).

More specifically, Minnesota statutes limit a person's time to object to the value of the stock listed in an inventory or a final account: "The right of any distributee to object to the proposed distribution on the basis of the kind or value of asset . . . terminates if the distributee fails to object in writing received by the personal representative within 30 days after mailing or delivery of the proposal." Minn. Stat. § 524.3-906(b) (2020).<sup>3</sup> In addition, a person can challenge the probate court's determination of value through an appeal, but not after the passage of six months' time. Minn. Stat. § 525.712 (2020). In the absence of any objection and in the absence of any appeal, the value of an asset cannot be relitigated in a subsequent proceeding, whether the value of the asset is "right or wrong." See *Bengtson*, 35 N.W.2d at 629; *Rickert*, 170 N.W. at 916; cf. *Dieseth v. Calder Mfg. Co.*, 147 N.W.2d 100, 103 (Minn. 1966) (stating that "[e]ven though the decision of the trial court in the first order may have been wrong, if it is an appealable order it is still final after the time for appeal has expired"); *Johnson v. Johnson*, 902 N.W.2d 79, 83 (Minn. App. 2017) (citing this aspect of *Dieseth*).

In this case, Glen Waara made no objection to the value of the Graco stock or the stock price listed, and his right to object terminated "30 days after mailing or delivery" of the 2006 inventory and the 2006 final account. See Minn. Stat. § 524.3-906(b). Mary Lou Waara filed a statement attesting that all assets had been distributed and closed the estate, and Glen Waara did not challenge the proceedings or appeal any aspect of the 2006 proceedings within six months' time. See Minn. Stat. § 525.712. The value of the Graco

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<sup>3</sup> We cite the most recent version of the relevant statutes because they have not been amended in relevant part since the 2006 proceedings.

stock, and the stock price listed in the 2006 proceedings, whether right or wrong, became final after the 6-month time to appeal passed. The supplemental inventory, filed on July 31, 2018, listed the Graco stock as “4,863 Issued Shares of Graco, Inc. Common Stock,” with a fair market value of \$153,768.06. Because the 2018 description and value are identical to what was stated in the 2006 inventory, Glen Waara had no right to object to or litigate the value of the Graco stock in 2018.

We observe that, in fact, the 2006 inventory, the 2006 final account, and the 2006 receipt for assets by distributee all reflected the same incorrect value of the Graco stock. In addition, we observe that because the Graco stock was titled in Mary Lou Waara’s name in her capacity as personal representative and not in her capacity as an individual, Mary Lou Waara made at least two other incorrect statements in 2006: she stated that she had received the Graco stock in full in the 2006 receipt for assets by distributee; and she stated that she “[f]ully administered this Estate” and “[i]nventoried the assets of the Estate and distributed them to the persons entitled to them” in the 2006 statement to close the estate.

To the extent Glen Waara argues that these false statements amount to fraud and permit a challenge to the value of the Graco stock, we disagree for two reasons. First, Glen Waara cites to no authority permitting such objections, either generally or specifically, when a successor personal representative is appointed for a limited, ministerial purpose, unrelated to the previously stated value of the asset. *See Waters v. Fiebelkorn*, 13 N.W.2d 461, 464-65 (Minn. 1944) (“[O]n appeal error is never presumed. It must be made to appear affirmatively before there can be reversal . . . [and] the burden of showing error rests upon the one who relies upon it.”). Second, the record in this case includes no



evidence of fraud, as counsel conceded during oral argument to this court.<sup>4</sup> Instead, there is only evidence of inaccuracies and counsel’s speculation regarding motive for the inaccuracies. We decline to interpret the deadline set forth in section 524.3-906(b) or section 525.712 as including an unwritten exception. The statutory deadline precludes any objection in 2018 to the 2006 value of the Graco stock.<sup>5</sup>

Because Glen Waara did not timely object to or appeal the value of the Graco stock as part of the 2006 probate proceedings, his 2018 objection to the value of the stock is time-barred. We reverse the district court’s decision to allow respondent’s objection and remand to the district court for findings consistent with this opinion.

**Reversed and remanded.**

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<sup>4</sup> In this case, Glen Waara testified that he has “no idea” why Mary Lou Waara improperly valued the shares, nor why she filed the final account and inventory. He also argued that he had “no reason to know or even suspect that his mother was lying to him about the value of the shares.” At oral argument before this court, counsel agreed that the record contains only evidence of inaccurate statements.

<sup>5</sup> Rodriguez also argues that such claims are precluded by *res judicata*, laches, and various statutes of limitation. We agree that the statutory framework in Minnesota provides for lawsuits against a personal representative and that such claims may be barred by equitable doctrines or any applicable statutes of limitations. *See* Minn. Stat. § 524.1-106 (2020) (allowing claims alleging fraud within two years after discovery of the fraud); Minn. Stat. § 524.1-304 (2020) (allowing modification of a probate distribution upon a petition within two years of discovery of fraud or misrepresentation); Minn. Stat. § 524.3-1005 (2020) (allowing claims against the personal representative for breach of fiduciary duty within six months of filing a closing statement); Minn. Stat. § 524.3-1006 (2020) (barring heirs from recovering property improperly distributed after the passage of either three years from the decedent’s death or one year from the distribution). We need not determine whether Glen Waara may properly bring such claims because none are before us and none were filed in the district court.