

*This opinion is nonprecedential except as provided by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
A21-1231**

In re the Estate of:
Joann Roselia Gregory, aka JoAnn R. Gregory and aka JoAnn Gregory, Deceased.

**Filed June 27, 2022
Affirmed
Jesson, Judge**

Scott County District Court
File No. 70-PR-20-9342

Timothy C. Lamb (pro hac vice), Lamb Law LLC, Grand Forks, North Dakota; and

Kimberly Prchal, Blahnik, Prchal & Stoll, Prior Lake, Minnesota (for appellants)

Anton Cheskis, Huemoeller, Gontarek & Cheskis PLC, Prior Lake, Minnesota (for respondent)

Considered and decided by Reyes, Presiding Judge; Jesson, Judge; and Rodenberg, Judge.*

NONPRECEDENTIAL OPINION

JESSON, Judge

This case centers on a clash between siblings over a fourth-generation family farm. Appellants Ronald and Jeffrey Gregory (the Gregory brothers) challenge the district court's denial of their petition to remove their sister, respondent Judith Vogel, as the personal

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

representative of their mother's estate. They argue that the district court erred by: (1) failing to hold a hearing on their removal petition or give notice of a hearing and (2) denying their removal petition on the merits. Because the record demonstrates that the Gregory brothers did receive a hearing on their removal petition and that the district court's denial of that petition was within its wide discretion, we affirm.

FACTS

Joann Roselia Gregory died in February 2019. At the time of her death, three children survived her: Vogel and the Gregory brothers. Joann Gregory's will states that if her husband predeceased her (as is the case here), her home and 95-acre farm property will be distributed equally among her surviving children. Additionally, Joann Gregory held a one-eighth interest in the Breeggemann Family Trust, a partnership that owns substantial property outside of Shakopee, Minnesota. The will divides her share of the partnership equally among her three children.

In March 2019, the district court appointed Vogel as personal representative of Joann Gregory's estate. In May 2020, over a year later, Vogel contracted with a real-estate agent to sell the family farmstead. Later that month, she signed a purchase agreement with a buyer. In July 2020, Vogel petitioned the district court for approval of the sale, and the Gregory brothers objected. *See In re Est. of Gregory*, No. A20-1160, 2021 WL 2529556, at *1 (Minn. App. June 21, 2021), *rev. denied* (Minn. Sept. 21, 2021). They expressed an interest in buying Vogel's portion of the farmstead using their shares of the Breeggemann partnership. Following an evidentiary hearing, the district court found that Vogel acted

fairly and reasonably in her dealings with the sale of the farmstead and approved the sale. *Id.* The Gregory brothers appealed to this court.

While the appeal was pending, the Gregory brothers recorded a notice of lis pendens on the farmstead.¹ The brothers sent a copy of the notice directly to the buyer. Vogel then sued the Gregory brothers for slander of title, tortious interference with contractual relationships, and declaratory judgment to invalidate and discharge the lis pendens notice. In response, the brothers petitioned to remove Vogel as personal representative. They later voluntarily withdrew the petition.

In April 2021, Vogel petitioned the district court to make a partial distribution of the assets from the Breeggemann partnership so that the Gregory brothers could have a say in future partnership matters and directly receive future partnership distributions. The district court set a hearing on the partial-distribution petition for May 20, 2021. Seven days before the hearing, the Gregory brothers objected to the petition. Rather than agreeing to distribute the partnership shares, they repeated their offer to exchange their shares of the Breeggemann partnership with Vogel in return for her interest in the family farmstead. The Gregory brothers also filed a renewed petition to remove Vogel as personal representative. They did not request a hearing on the removal petition.

At the May 20 hearing, the district court addressed both the petition for partial distribution and the removal petition. After discussing the petition for partial distribution, the district court inquired of the Gregory brothers: “you have a motion to relieve Ms. Vogel

¹ A notice of lis pendens makes a potential buyer of real property aware of pending actions that may affect the title to that property. Minn. Stat. § 557.02 (2020).

as trustee Is that still on the table that motion?” The Gregory brothers answered “[y]es” and explained that the removal petition “goes part and parcel” with the partial-distribution motion because one of the reasons to remove Vogel as personal representative was her failure to order an appraisal of the Breeggemann partnership assets—the subject of the partial-distribution petition. When counsel finished, the district court then stated, “Since the motions were made and they’ve been heard today, I’ll take them under advisement.”

After the May hearing, we affirmed the sale of the family farmstead. In that opinion, we questioned whether the Gregory brothers had made a timely offer to purchase the farmstead and ruled that even if they had, Vogel was not obligated to sell the farmstead to them. *Gregory*, 2021 WL 2529556, at *3. This court determined that the Gregory brothers have no “legal basis upon which to object to the sale.” *Id.* at *1. We approved the sale of the family farmstead, and the supreme court denied further review. *Id.*

In August, the district court released an order denying the removal petition. It stated that “[n]one of Ms. Vogel’s actions so far have been deemed frivolous or unnecessary” and “[t]he brothers have not shown that there is any cause for removal of Ms. Vogel as the Personal Representative. Her actions have been reasonable, appropriate, fiscally responsible, and in the best interests of the Estate.”

The Gregory brothers appeal.

DECISION

The Gregory brothers argue that they did not receive a hearing on their removal petition, they did not receive notice of a hearing on their removal petition, and the district

court abused its discretion when it denied their removal petition. Whether the Gregory brothers received a hearing and what notice procedure applies is a question of statutory interpretation, which we review de novo. *See City of Oronoco v. Fitzpatrick Real Est., LLC*, 883 N.W.2d 592, 595 (Minn. 2016) (interpreting an attorney-lien statute de novo). We review the district court’s decision on the removal petition for an abuse of discretion. *In re Est. of Martignacco*, 689 N.W.2d 262, 269 (Minn. App. 2004), *rev. denied* (Minn. Jan. 26, 2005).

I. The Gregory brothers received a hearing on their removal petition, though they failed to request one and did not follow the statutory notice procedure.

Citing a lack of notice and their inability to present witnesses or exhibits, the Gregory brothers argue that they did not receive a hearing on their removal petition. A hearing is a judicial session, usually open to the public, to decide issues of fact or law. *T.G.G. v. H.E.S.*, 946 N.W.2d 309, 316 (Minn. 2020) (defining hearing); *Black’s Law Dictionary* 865 (11th ed. 2019).

The Gregory brothers received a hearing on May 20, 2021. They had an opportunity to argue their motion before the district court. The district court considered written arguments from Vogel and the Gregory brothers. And the Gregory brothers attached four exhibits to their removal petition, which the district court considered. Though the Gregory brothers’ oral arguments were brief, the district court did not interrupt them. Moreover, this was a renewed petition for removal, so the district court was familiar with the issue.

Because the petition was filed seven days before the May 20 hearing, the Gregory brothers should have known that their motion would be addressed at that hearing. They

acknowledged as much at the May 20 hearing when they stated that the removal petition “is kind of tied up with . . . everything that’s going on here.” In sum, because the Gregory brothers had a judicial session open to the public that decided issues of fact and law regarding their removal petition, they received a hearing on May 20.

Still, the Gregory brothers argue that they did not receive a hearing on their removal petition because the district court failed to provide notice that it would consider the removal petition at the May 20 hearing. They point to Minnesota Statutes section 524.3-611(a) (2020) that states, in part, that “the court shall fix a time and place for hearing” a removal petition. And the Gregory brothers contend that they never received notice that the court had, indeed, “fixed” the hearing time and place. This assertion raises a question of statutory interpretation, which turns on the interplay among four rules and statutes.

First, the Minnesota General Practice Rules applicable to probate matters state: “In all formal proceedings notice of a hearing on any petition shall be given as provided in the [Uniform Probate Code as adopted by Minnesota] after the court issues the order for hearing.” Minn. R. Gen. Prac. 404(a). Second, the version of the Uniform Probate Code adopted by the Minnesota Legislature specifies that: “If notice of a hearing on any petition is required . . . *the petitioner* shall cause notice of the time and place of hearing of any petition to be given to any interested person or the person’s attorney.” Minn. Stat. § 524.1-401(a) (2020) (emphasis added) (the notice statute). Third, generally, “[a] hearing date and time shall be obtained from the court administrator or a designated motion calendar deputy. *A party obtaining a date and time for a hearing* on a motion or for any other calendar setting, shall promptly give notice.” Minn. R. Gen. Prac. 115.02 (emphasis

added); *see also* Minn. R. Gen. Prac. 1.01 (stating that general practice rules apply in all district courts). Fourth, section 524.3-611(a) provides that when a person petitions to remove a personal representative, “the court shall fix a time and place for hearing.”

Statutory interpretation is a question of law which we review *de novo*. *Oronoco*, 883 N.W.2d at 595. And our objective in statutory interpretation is to determine the intent of the legislature. *State v. Riggs*, 865 N.W.2d 679, 682 (Minn. 2015). The first step in statutory interpretation is to determine whether the statute’s language is ambiguous. *State v. Thonesavanh*, 904 N.W.2d 432, 435 (Minn. 2017). A statute is ambiguous if its language is “subject to more than one reasonable interpretation.” *Christianson v. Henke*, 831 N.W.2d 532, 537 (Minn. 2013). Multiple parts of a statute may be read together to determine whether the statute is ambiguous. *Martin v. Dicklich*, 823 N.W.2d 336, 344-45 (Minn. 2012).

When read together, these four provisions are not ambiguous. The plain language of rule 404, the notice statute, rule 115.02, and section 524.3-611(a) indicate that in formal probate proceedings, it is the petitioning party’s responsibility to request a hearing and notify other parties of such a hearing. Thus, if a hearing is required for a removal petition, the petitioning party must request one and then follow the notice procedures. Then it falls to the district court to hold the hearing.

Here, the Gregory brothers failed to request a hearing and failed to notify Vogel of a hearing date under the Minnesota Rules of General Practice. But they still received a hearing from the district court. Thus, any error in the lack of notice or hearing was their own. *See Hesse v. Hesse*, 778 N.W.2d 98, 104 (Minn. App. 2009) (noting that a party

cannot complain about their own mistake). In sum, because a petitioning party must obtain a hearing date and time from the district court—and the Gregory brothers failed to request a hearing, yet they received one—they cannot now claim that the district court deprived them of notice or a hearing on their removal petition.²

II. The district court acted within its discretion by declining to remove Vogel as personal representative of the estate.

The Gregory brothers argue that the district court abused its discretion when it denied their removal petition. They assert that removal is proper for four reasons: (1) Vogel has animosity towards the Gregory brothers, (2) Vogel mismanaged the estate and failed to provide proper accounting, (3) Vogel has a conflict of interest as both beneficiary and personal representative, and (4) Vogel refused to negotiate with the Gregory brothers regarding the sale of the farmstead. Most of these claims revolve around the sale of the farmstead. We first set out the applicable law and then address each allegation in turn.

The district court has discretion to determine suitability of a personal representative, and we will not reverse the district court absent an abuse of discretion. *Martignacco*, 689 N.W.2d at 269. A district court abuses its discretion when it misconstrues the law or when its factual findings are clearly erroneous. *Gams v. Houghton*, 884 N.W.2d 611, 620

² The Gregory brothers also argue that they were entitled to an evidentiary hearing on their removal petition. Because they never requested an evidentiary hearing from the district court, this issue is not properly before us, and we decline to address the question. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that appellate courts generally refuse to address matters not previously presented to and considered by the district court).

(Minn. 2016). “Cause for removal [of a personal representative] exists when removal is in the best interests of the estate.” Minn. Stat. § 524.3-611(b) (2020).

Animosity

The Gregory brothers contend that the high level of animosity between themselves and Vogel creates “a real and significant harm to the value of the estate.” But animosity alone is not sufficient to remove a personal representative. *In re Est. of Michaelson*, 383 N.W.2d 353, 356 (Minn. App. 1986). For example, this court affirmed removal of a personal representative when the representative ignored the beneficiaries’ requests and tried to exclude the beneficiaries from a home belonging to the estate. *Id.* at 354. But the *Michaelson* court did not affirm solely on animosity; instead, it also noted that the personal representative was “emotionally unstable” and put forth “frivolous and incomprehensible arguments” to the court. *Id.* at 356. We therefore affirmed removal. *Id.*

The Gregory brothers’ arguments do not demonstrate sufficient animosity to remove Vogel. First, although there is “near constant conflict” between the Gregory brothers and Vogel, the facts in the record fail to rise to the level of *Michaelson*. Second, the animosity that the Gregory brothers allege arises out of the farmstead sale that this court already approved. *Gregory*, 2021 WL 2529556, at *3. Third, the lis-pendens action, which the Gregory brothers argue shows animosity, also shows that Vogel is acting to protect the estate. The Gregory brothers’ animosity argument fails.

Mismanagement

The Gregory brothers contend that Vogel mismanaged the estate. Mismanagement of the estate is a listed reason for removing a personal representative under Minnesota law.

Minn. Stat. § 524.3-611(b). Here, the only mismanagement alleged beyond the sale of the farmstead, which this court approved, is failure to provide a supplemental inventory detailing Joann Gregory's share of the Breeggemann partnership assets. But as the district court found, Vogel attempted to distribute the shares of the partnership to the Gregory brothers so that they could be involved in future partnership dealings—this was the focus of Vogel's partial-distribution motion, to which the Gregory brothers objected. The Gregory brothers allege no other facts showing mismanagement beyond Vogel's handling of the sale of the farmstead. The district court did not clearly err by finding that Vogel did not mismanage the estate.

Conflict of Interest

The Gregory brothers argue that Vogel has a conflict of interest as both beneficiary and personal representative of the estate. Minnesota courts have removed personal representatives because of conflict between the interests of the personal representative and the interests of the estate. *See In re Munson's Est.*, 57 N.W.2d 26, 29 (Minn. 1953) (holding that personal representative was personally and financially interested as heir and that his position was antagonistic to administration of will); *In re Est. of Matteson*, 245 N.W. 382, 382 (Minn. 1932) (holding conflict between interests of personal representative and interests of estate justified removal of personal representative). These removals, however, occurred where the personal representatives also took actions inconsistent with carrying out the terms of the wills or delayed, mismanaged, wasted, or misappropriated estate assets. *See Munson*, 57 N.W.2d at 29; *Matteson*, 245 N.W. at 382.

No such omission or waste existed here, the district court found. That finding is supported by the record. The Gregory brothers allege no facts to support their conflict-of-interest claim that do not stem from the sale of the farmstead. And even if the record showed a conflict of interest, the Gregory brothers produced no evidence showing that Vogel acted contrary to the terms of the will. *See Munson*, 57 N.W.2d at 29; *Matteson*, 245 N.W. at 382. Accordingly, this argument also fails.³

In sum, the Gregory brothers received a hearing on their removal petition despite failing to request one, and the district court did not abuse its discretion by denying the Gregory brothers' renewed removal petition.

Affirmed.

³ The Gregory brothers argue that Vogel refused to negotiate an exchange of the farmstead for their interest in the Breeggemann partnership. Refusal to negotiate is not explicitly listed as cause for removal of a personal representative, but “[c]ause for removal exists when removal is in the best interests of the estate.” Minn. Stat. § 524.3-611(b). But because this argument again stems from the sale of the farmstead, which this court already approved, the district court did not abuse its discretion by rejecting this argument.