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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A21-1241**

In re the Estate of: Sylvia Ann Mourning, Deceased.

**Filed April 18, 2022  
Reversed and remanded  
Reyes, Judge**

Scott County District Court  
File No. 70-PR-18-12182

D. Clay Taylor, Taylor Fricton, P.L.L.C., Edina, Minnesota (for appellant Michael Mourning)

Court J. Anderson, Benjamin J. Hamborg, Henson & Efron, P.A., Minneapolis, Minnesota (for respondent Elizabeth Ann Bakker)

Considered and decided by Johnson, Presiding Judge; Reyes, Judge; and Cochran, Judge.

**NONPRECEDENTIAL OPINION**

**REYES**, Judge

Appellant, acting as personal representative of decedent's estate, challenges the district court's denial of his attorney-fee request. We reverse and remand.

**FACTS**

Sylvia Mourning (decedent) died intestate in June 2017. Decedent had three children who became her heirs: appellant Michael Mourning (Michael), Dana Mourning

(Dana), and respondent Elizabeth Bakker (Elizabeth).<sup>1</sup> Michael was appointed personal representative of decedent's estate. Decedent's assets included a house in St. Louis Park (the house). Elizabeth purchased the house in 1998, but it went into foreclosure after she defaulted on the mortgage in 2008. Decedent then bought the house from the bank for \$153,000. Elizabeth continued living in the house and was living there when decedent died. From 2008 until decedent's death in 2017, Elizabeth made only minor, sporadic payments to help pay for the line of credit decedent had taken out to purchase the house, and she did not contribute to decedent's payments for real-estate taxes and homeowner's insurance.

Elizabeth disagreed with Michael on how the estate should handle the disposition of the house. In May 2018, Michael told Elizabeth that the county estimated the market value of the house at \$266,200, and she could either buy it for \$275,000 or be evicted. Elizabeth rejected the offer. She claimed that, when decedent purchased the house in 2008, decedent had promised to retitle it in Elizabeth's name once Elizabeth paid decedent back for the post-foreclosure purchase. Elizabeth therefore argued that she should only pay \$153,058 to the estate for the house to account for the mortgage and real-estate taxes she owed decedent. In June 2018, Elizabeth filed a petition to determine title to the house, claiming that the district court should impose a constructive trust on the property in her favor. Michael as the personal representative opposed the petition, arguing that the house

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<sup>1</sup> Because this dispute involves family members with the same last name, we refer to the parties by their full first names to avoid confusion.

should remain part of the estate. The district court scheduled a petition hearing for March 2019.

On February 12, 2019, Elizabeth told Michael that she had agreed to purchase Dana's interest in the estate for \$80,000. The agreement contained a mutual release whereby Elizabeth and Dana agreed to release each other from all liability related to the estate. After that agreement, Elizabeth would inherit two-thirds of the estate, with Michael inheriting the other third. On that same day, Michael offered to sell his interest in the estate to Elizabeth for \$100,000, with the same release that she negotiated with Dana. Elizabeth declined his offer, stating that she did not have enough information on Michael's estate administration to take over as the personal representative or to grant a release. Elizabeth repeated her initial \$153,000 offer and asked Michael to translate his buyout proposal into a sale price for the house so the parties could negotiate. Michael did not do so.

The parties proceeded to the hearing on Elizabeth's petition. On April 26, 2019, the district court denied Elizabeth's constructive-trust claim, determining that she provided insufficient evidence that decedent intended her to obtain title to the house and that she would be unjustly enriched at the expense of the estate if it imposed a constructive trust in her favor. The district court ordered Michael to proceed with the disposition of the house as the personal representative of decedent's estate.

On May 7, 2019, Elizabeth offered to purchase the house for \$250,000. In a May 8, 2019 letter, Michael instead offered to sell it for \$285,000, plus \$35,250 in back rent. His offer also required Elizabeth "to fully release any claim she has or may have against

the Personal Representative related to his administration of the estate.” Elizabeth counteroffered \$270,000 without a release. Michael rejected that offer.

Elizabeth’s friend G.F. offered to purchase the house on Elizabeth’s behalf for \$270,000 or \$285,000 in cash, depending on whether the estate had already hired a real-estate agent. Michael told Elizabeth that he was proceeding with the sale of the house and that he would consider any offers once the house was on the market.

Elizabeth then filed a petition to remove Michael as personal representative, arguing that Michael had breached the fiduciary duties he owed to the estate by requiring a release for any liability related to his estate administration before he would sell the house to Elizabeth. The district court directed Michael to list and sell the house. Michael retained a real-estate agent who listed the house for sale. Shortly after, the real-estate agent suggested the estate sell the house to Elizabeth for \$290,000. The parties agreed and closed the cash sale of the house in September 2019.

Elizabeth continued to dispute Michael’s estate administration. In December 2019, as part of the winding up of the estate administration, Michael provided a draft of the final accounting to Elizabeth. Among other things, Elizabeth objected to Michael’s request for attorney fees incurred by the Taylor Fricton, PLLC, firm after February 12, 2019, arguing that those fees were not incurred in good faith.<sup>2</sup> Michael rejected Elizabeth’s prehearing settlement proposals. Michael also served discovery requests seeking information about

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<sup>2</sup> Michael retained the Taylor Fricton firm to handle litigation over the house. Michael retained a different firm to prepare the inventory and final accounting. Elizabeth did not challenge Michael’s request for reimbursement for attorney fees incurred by that firm.

Elizabeth's relationship with G.F. and her buyout of Dana's interest. The district court denied Michael's discovery requests and instructed him to submit evidence supporting his attorney-fee requests.

The district court issued its findings of fact, conclusions of law, and order on Elizabeth's objections to Michael's final accounting. The district court determined that Michael acted for his personal benefit when he began demanding a release and refused to negotiate with Elizabeth in good faith over the house sale and her final-accounting objections. The district court found that the challenged fees "could have been avoided had [Michael] simply negotiated in good faith" over the house sale instead of "demanding" a release. The district court also stated that, after the sale, Michael "continued to take actions that drove up the estate's litigation costs *without offering any benefit to the estate.*" (Emphasis added). The district court allowed Michael to recover fees that the Taylor Friction firm incurred before February 12, 2019, but denied his request for any fees incurred by the firm after that date.

Michael moved for amended findings or a new trial, contesting the district court's order regarding the attorney-fee issue. The district court denied his motion.<sup>3</sup> This appeal follows.

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<sup>3</sup> To support her objection to Michael's attorney-fee requests, Elizabeth submitted to the district court communications between the parties' attorneys regarding the disposition of the house and Elizabeth's objections to the final accounting. Michael argued at the district court that those communications should not be admitted because they were settlement discussions and were accordingly inadmissible under Minn. R. Evid. 408. The district court, relying on our nonprecedential and nonbinding opinion in *Buetow v. Buetow*, Nos. C6-01-1314, C9-01-1677, 2002 WL 453098, at \*8 (Minn. App. Mar. 26, 2002), rejected Michael's argument and admitted the communications into evidence. On appeal, Michael

## DECISION

**The district court abused its discretion by denying reimbursement of all attorney fees incurred by the Taylor Fricton firm after February 12, 2019.**

Michael argues that the district court misapplied Minn. Stat. § 524.3-720 (2020) and that its denial of all attorney fees incurred after February 12, 2019, was overly broad. We agree and discuss each issue in turn.

We review the district court’s denial of attorney fees for an abuse of discretion. *In re Est. of Martignacco*, 689 N.W.2d 262, 271 (Minn. App. 2004), *rev. denied* (Minn. Jan. 26, 2005). “A district court abuses its discretion when its decision is based on an erroneous view of the law or is inconsistent with the facts in the record.” *In re Stisser Grantor Tr.*, 818 N.W.2d 495, 508 (Minn. 2012).

**A. The district court misapplied section 524.3-720 by requiring Michael to show that his actions actually benefitted the estate.**

Michael, in his capacity as personal representative, sought reimbursement for attorney fees under the first sentence of section 524.3-720. Under the first sentence of section 524.3-720, “Any personal representative . . . who defends or prosecutes any proceeding in good faith, whether successful or not . . . is entitled to receive from the estate necessary expenses and disbursements including reasonable attorneys’ fees incurred.” A personal representative is not required to show that his actions actually benefitted the estate

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does not challenge the district court’s decision on that issue, so we do not consider here whether the challenged communications should have been excluded under Rule 408. *See State v. Robinette*, 964 N.W.2d 143, 147 n.6 (Minn. 2021) (noting that parties forfeit appellate review by failing to argue an issue on appeal).

to recover attorney fees under the first sentence of section 524.3-720. *In re Est. of Evenson*, 505 N.W.2d 90, 92 (Minn. App. 1993).

In denying attorney fees to Michael, the district court first stated that, for the personal representative to receive attorney fees from the estate under section 524.3-720, “the Court must determine that the services for which the fees are sought actually benefitted the estate.” It proceeded to analyze Michael’s fee request under that standard, determining that he was not entitled to fees incurred after February 12 because his actions taken after that date did not benefit the estate. And in denying Michael’s motion for amended findings, the district court again stated that it had “applied the appropriate legal test when determining whether the [personal representative] had acted in bad faith . . . . in applying this standard, the Court sought to determine whether the [personal representative]’s behavior actually benefitted the estate . . . .”

This was error. The district court cited *In re Estate of Opsahl*, 448 N.W.2d 96, 102-03 (Minn. App. 1989), for the actual-benefit requirement. In *Opsahl*, we confirmed that a party seeking attorney fees under a different statute, Minn. Stat. § 525.515, must show that the services for which fees are sought actually benefitted the estate. We expressly held in *Evenson* that the actual-benefit requirement does *not* apply to fees sought by a personal representative under the first sentence of section 524.3-720. 505 N.W.2d at 92. We acknowledge that benefit to the estate may be relevant if an interested person seeks attorney fees under the second sentence of section 524.3-720 in certain situations, but none of those situations is present in this appeal. The district court therefore misapplied the law by analyzing Michael’s section 524.3-270 fee request under an actual-benefit standard.

**B. The district court misapplied section 524.3-720 by basing its bad-faith finding solely on Michael’s conduct in settlement negotiations.**

The district court also misapplied the law by basing its bad-faith finding solely on Michael’s conduct in negotiations with Elizabeth over the house sale. Michael argues that the district court erred as a matter of law by failing to articulate its standard for “good faith.” The district court did not have to, as a matter of law, articulate its good-faith standard. We do, however, agree that the district court failed to properly evaluate good faith under section 524.3-720.

“Good faith” is the legal standard a factfinder applies to a set of facts. *See Reimringer v. Anderson*, 960 N.W.2d 684, 690 (Minn. 2021). Defining good faith in the context of section 524.3-720 is therefore a legal question that we review de novo. *See id.*

Minnesota’s probate statutes do not expressly define good faith. *See* Minn. Stat. § 524.1-108 (providing general definitions for terms in chapter 524). Minnesota courts have also not expressly defined good faith in the context of section 524.3-720. But the Minnesota Supreme Court’s interpretation of a prior version of the attorney-fee statute equated “good faith” with “honest belief.” *See In re Est. of Healy*, 76 N.W.2d 677, 680-81, 680 n.5 (Minn. 1956) (concluding that only reasonable interpretation of “good faith and with just cause” related to will executor’s honest belief in validity of will and noting



that “[g]ood faith *or honest belief* in a case such as this is incapable of precise definition” (emphasis added)).<sup>4</sup>

The dictionary definition also supports our conclusion that “good faith” means “honesty in belief or purpose.” See *Black’s Law Dictionary* 836 (11th ed. 2019); *Gilbertson v. Williams Dingmann, LLC*, 894 N.W.2d 148, 152 (Minn. 2017) (noting that, absent statutory definition, courts turn to plain meaning of statutory phrase as determined by dictionary definitions); cf. *Reimringer*, 960 N.W.2d at 690 (“At a high level, bad faith can be understood as dishonesty of belief, purpose, or motive.” (quotations and citations omitted)).

In accordance with that definition, the few Minnesota cases addressing the “good faith” requirement of section 524.3-720 have generally focused on whether a party asserted a claim in good faith *as it related to the merits of the claim*. In other words, the focus is on whether the party asserted the claim with an honest belief in its validity and a foundation in law and fact. See *Healy*, 76 N.W.2d at 680 (interpreting prior version of statute requiring

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<sup>4</sup> The version of Minnesota’s probate code analyzed in *Healy* included this provision:

When any person named as executor in a will or codicil defends or prosecutes any proceedings in good faith and with just cause, for the purpose of having it admitted to probate, whether successful or not . . . he shall be allowed out of the estate his necessary expenses and disbursements in such proceedings together with such compensation for his services and those of his attorneys as the court shall deem just and proper.

Minn. Stat. § 525.49 (1956). Minnesota has since adopted the Uniform Probate Code, and attorney fees for personal representatives are now governed by sections 524.3-720 and 525.515.

“good faith” as pertaining to fee-seeker’s honest, though mistaken, belief that will was valid); *Evenson*, 505 N.W.2d at 91-92 (affirming good-faith finding of personal representative named in will who defended will ultimately deemed invalid); *Martignacco*, 689 N.W.2d at 271 (affirming district court’s denial of attorney fees incurred challenging respondent-heir’s claim after personal representative received credible information that respondent was decedent’s biological issue).

We therefore conclude that, based on the plain language of section 524.3-270, the district court should identify the proceedings for which a party seeks attorney fees, then determine whether that party’s claim or position regarding that proceeding is grounded in an honest belief as to its merits.

The district court failed to do that here. It simply determined that Michael acted in bad faith by failing to negotiate without seeking a liability release starting on February 12, 2019, and then denied his request for any fees incurred by the Taylor Friction firm after that date. By focusing entirely on Michael’s alleged bad faith in settlement negotiations, the district court did not distinguish between Michael’s actions as to his personal offer to sell his interest in the estate to Elizabeth; his successful defense of Elizabeth’s constructive-trust claim; his actions regarding the sale of the house; his May 8, 2019 sale offer in his capacity as personal representative which included a release for any liability related to his estate administration; and his actions during the final accounting and post-sale litigation.

Finally, Michael encourages us to adopt a presumption of good faith when a personal representative successfully defends or prosecutes a proceeding and argues that he is entitled to that presumption. Michael notes that he successfully defended against

Elizabeth's petition and that the house ultimately sold for more than Elizabeth's offers. The plain language of the statute establishes no such presumption, and we will not read one into it. But because we agree that the district court analyzed his claims under the wrong standard, we reverse and remand to the district court to reconsider his attorney-fee request.

**C. The district court's attorney-fee denial was overly broad.**

We also note that the district court's original denial was overly broad, even under its own bad-faith findings. The district court issued a blanket denial of fees for the Taylor Friction firm after February 12, 2019, determining that Michael's bad-faith failure to negotiate led to litigation over the house that could have been avoided. But some fees, such as those incurred for drafting and negotiating the purchase agreement or for time spent closing the sale, may have been incurred even if Michael had initially negotiated a sale with Elizabeth. As to those instances, the district court abused its discretion by basing its denial on *when* the fees were incurred rather than focusing on whether Michael's alleged lack of good faith affected the fee amount.

On remand, the district court should identify the particular proceedings for which Michael sought attorney fees and then determine whether Michael's claim or position regarding that proceeding was based on his honest belief in its validity and a legitimate foundation in law and fact. We offer no opinion on whether Michael acted in good faith in any proceeding.

**Reversed and remanded.**