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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1316**

In re the Estate of Vernie Carl Payne, Deceased.

**Filed July 5, 2022
Affirmed
Jesson, Judge**

Wright County District Court
File No. 86-PR-20-4736

J. Noble Simpson, Luther M. Amundson, Maser, Amundson & Boggio, P.A., Richfield, Minnesota (for appellant JoLinda J. Elletson)

Jacob Thomas Erickson, Smith, Paulson, O'Donnell & Erickson, P.L.C., Monticello, Minnesota (for respondent Tobin T. Payne)

Considered and decided by Reyes, Presiding Judge; Jesson, Judge; and Wheelock, Judge.

NONPRECEDENTIAL OPINION

JESSON, Judge

This case requires us to determine whether an unexpected change in circumstances justified the district court's decision to allow respondent Tobin Payne to purchase the family homestead from his father's estate. The will allowed Payne to buy the homestead for a below-market-value price, provided that he completed the sale within 180 days of his father's death. But the pandemic delayed necessary court hearings and Payne was not able to complete the sale within that timeline. The district court concluded that the pandemic rendered the will ambiguous and approved the sale of the homestead to Payne. Because

the will is ambiguous and because the district court did not abuse its discretion by authorizing the sale, we affirm.

FACTS

Vernie C. Payne, father, died on June 28, 2020, and was survived by five adult children, including appellant JoLinda Elletson and Payne. In his will, father nominated Payne as personal representative. The will authorized Payne to purchase the family homestead for a set price of \$160,000 provided that he closed the sale within 180 days of father's death.¹

In October 2020, Payne petitioned for formal probate of the will and requested appointment as the personal representative. The district court set a hearing for November 2020. But a week before the hearing, Elletson and another sister objected to Payne's appointment as the personal representative. Because the court did not have sufficient time to hear the objections at the November hearing, it continued the matter to the next available date, which was in February 2021. Elletson filed two more objections but failed to appear at the continued hearing.² The court appointed Payne as personal representative.

¹ In 2021, the market value of the homestead was estimated at \$461,200.

² Later that day, Elletson filed another objection and requested another hearing because she claimed that she was not able to join the remote hearing. The court explained in a memorandum that it delayed calling the case to give the objectors more time to appear and only began the matter after confirming that no one had called into the courthouse reporting technical difficulties in joining the hearing.

In April 2021, Payne petitioned for an order approving the sale of the homestead to himself. Elletson objected to the petition, arguing that the 180-day deadline had lapsed. The district court set a hearing on Elletson's objection for June 2021.

At the hearing, Payne testified that he purchased the land on which the homestead was built from his great aunt in 1989. But he admitted that father gave him the funds to do so. Payne explained that the family shuffled around ownership of the land several times.³ Finally, he testified that he had been financially able to complete the sale before petitioning to be appointed personal representative.

Elletson testified that she remembered the 180-day deadline being discussed at meetings with father's lawyer and her siblings. She stated that she had no experience with probate before this and did not anticipate that her objection would cause a delay in the proceedings. She testified that she intended to attend the February hearing but did not receive a notice in the mail and was confused about how to join the hearing. She then explained that she calculated the 180-day date as December 25, 2020, informed Payne of this, and prepared her own bid on the homestead, to be effective December 26, 2020.

The district court allowed the parties to submit closing arguments in writing. Elletson argued that the will unambiguously required Payne to close the sale of the homestead within 180 days of father's death. Payne contended that the will was ambiguous

³ In 1991, Payne executed a quit-claim deed conveying the property to his parents. In 2001, Payne's parents added him back to the deed. In 2017, Payne again conveyed his interest in the property, this time just to father because his mother had already passed away. Payne testified that the final conveyance was intended to allow him to purchase the property from father's estate.

and the extrinsic evidence—including testimony from the family and a 1998 handwritten note from his parents conveying the homestead to him if they unexpectedly died—showed father’s intent that he be allowed to buy the homestead.

In August 2021, the district court granted Payne’s motion. The court found that the February 2021 hearing date was the earliest possible time that it could have appointed Payne as personal representative. And the court concluded that the delays in court proceedings caused by the pandemic, as well as Elletson’s objections, made the will ambiguous. Reviewing the available evidence of father’s intent, the court determined that father would not have wanted the delays to prevent Payne from exercising the option to buy the homestead. Accordingly, the court authorized the sale of the homestead.

Elletson appeals.

DECISION

Elletson argues that the district court incorrectly interpreted the will. Our primary task in interpreting a will is to determine the testator’s⁴ intent. *In re Est. & Tr. of Anderson*, 654 N.W.2d 682, 687 (Minn. App. 2002), *rev. denied* (Minn. Feb. 26, 2003). This requires an examination of the entire will. *In re Est. of Lund*, 633 N.W.2d 571, 574 (Minn. 2001). In conducting this inquiry, we first consider whether the will is ambiguous, a question of law which we review *de novo*. *In re Tr. of Shields*, 552 N.W.2d 581, 582 (Minn. App. 1996), *rev. denied* (Minn. 1996). If the will is ambiguous, the court may consider extrinsic evidence to resolve the ambiguity. *Anderson*, 654 N.W.2d at 687. But if the will

⁴ A testator is a person who dies leaving a will. *Black’s Law Dictionary* 1778 (11th ed. 2019).

is unambiguous, the court may not admit extrinsic evidence. *In re Trs. of Hartman*, 347 N.W.2d 480, 483 (Minn. 1984). We begin by evaluating the district court’s conclusion that the will is ambiguous and then consider its construction of the provision controlling the sale of the homestead.

I. The will is ambiguous.

A will is ambiguous if its language suggests more than one interpretation or if the surrounding circumstances reveal more than one interpretation. *In re Est. of Arend*, 373 N.W.2d 338, 342 (Minn. App. 1985).⁵ With this rule in mind, we consider the disputed provision here.

At issue is the provision in father’s will granting Payne the option to purchase the homestead. The will states:

I specifically grant to my son, Tobin Payne, the exclusive option to purchase my homestead real estate consisting of 40 acres, more or less, for the sum of One Hundred Sixty Thousand and 00/100 Dollars (\$160,000.00), which purchase closing shall be completed within 180 days of my death. This option is not assignable to any other individual. *In the event he cannot close the purchase within 180 days,*^[6] *it shall be offered for sale to my other issue who must close within ninety (90) days.* The priority to purchase shall be determined by a

⁵ The *Arend* court distinguished between patent ambiguities, which appear on the face of a will, and latent ambiguities, which arise from surrounding circumstances. *Id.* at 342. But we have already questioned the usefulness of this distinction and take no further note of it here. *See In re Est. of Cole*, 621 N.W.2d 816, 818-19 (Minn. App. 2001) (explaining that modern courts simply consider whether the will is ambiguous).

⁶ We note that the meaning of the phrase “he cannot close the purchase within 180 days” could be read to mean either that Payne had to have the capacity to buy the homestead (which he did), or that Payne had to close the purchase within the timeline (which he did not). But because we conclude that the will is ambiguous based on the intervening circumstances, we do not further consider whether the will is ambiguous based on this phrase alone.

random drawing of names. If none of my issue choose to purchase my homestead, it shall be sold by public auction.

(Emphasis added.) To determine whether this language is ambiguous, we turn to our caselaw.

Arend is one such case that involved language in a will that appeared to be clear on its face (as is the 180-day language here) but was made ambiguous by an intervening change in the law that would have deprived the testator’s children of inheriting anything. 373 N.W.2d at 341. In examining that situation, we explained that even where the language of the will appears clear, an ambiguity may occur when “surrounding circumstances reveal more than one construction.” *Id.* at 342. In *Arend*, this change in circumstances stemmed from a change to the United States Internal Revenue Code which would have resulted in the testator’s second wife inheriting the entire estate, leaving nothing for the children. *Id.* at 341. The district court concluded that this change in law rendered the will ambiguous. *Id.* We agreed, concluding that the unexpected change in law made the will ambiguous because the effect of the plain language—leaving nothing to the children—was contrary to the testator’s apparent intent. *Id.* at 342.

Here, the pandemic was an unexpected change that made the will ambiguous under these particular circumstances. The district court found that “Payne’s inability or inaction did not cause the delay,” and concluded that “the ongoing pandemic has caused a delay in court proceedings that has contributed to delays in this matter” because no sale of the

homestead was possible until a personal representative had been appointed.⁷ Like the change of law in *Arend*, the delays in court proceedings caused by the pandemic rendered the will ambiguous because it is unclear whether father would have intended for delays outside of Payne’s control to deprive him of an opportunity to purchase the homestead. Accordingly, the court did not err by concluding that the will was ambiguous.

To persuade us otherwise, Elletson argues that *Arend* should be read to hold only that an unexpected change of *law* (as opposed to a pandemic) can create an ambiguity. But the *Arend* court explained that an ambiguity may occur when intervening circumstances render the will unclear. *Id.* This holding is broader than a change in law and supports our conclusion here.

Next, Elletson contends that the pandemic-related delays did not render the will ambiguous because Payne could have filed a petition to extend the deadline or appointed a special master. But the court found that Payne was not able to close the sale during the 180-day period because of the delays and that it was not Payne’s fault. Nor has Elletson shown that Payne would have been able to obtain a hearing date sooner than February 2021. Accordingly, Elletson has not shown that the district court erred by concluding that the will was ambiguous.⁸

⁷ The district court also concluded that the “unexpected delay in appointing a personal representative following objections to Tobin Payne’s appointment caused a delay in the sale of the homestead.” But because we conclude that the pandemic made the will ambiguous, we do not reach this alternative reason.

⁸ Elletson also asserts that the district court erred by considering extrinsic evidence. But because we conclude that the pandemic made the will ambiguous, the court did not err by looking to extrinsic evidence to resolve that ambiguity. *Arend*, 373 N.W.2d at 342.

II. The district court acted within its discretion by approving the sale of the homestead to Payne.

After determining the will was ambiguous, the district court had to determine father's intent with respect to the ambiguity. *In re Est. of Fitzgerald*, 370 N.W.2d 683, 685 (Minn. App. 1985). To do so, the court is to put itself in the position of the decedent at the time he executed the will. *Hartman*, 347 N.W.2d at 483. Because the district court's interpretation of the will poses a mixed question of law and fact, we review its determination for an abuse of discretion. *See Porch v. Gen. Motors Acceptance Corp.*, 642 N.W.2d 473, 477 (Minn. App. 2002) (applying abuse-of-discretion standard to mixed question of law and fact), *rev. denied* (Minn. June 26, 2002).

Here, extrinsic evidence supports the district court's conclusion that father would not have intended Payne to lose his option to buy the homestead. Although the multiple conveyances of the property are somewhat unclear, Payne assisted his parents in purchasing the property and had his name on the deed from 1989 to 1991 and again from 2001 to 2017. And the signed note from his parents, written in 1998, also contemplates Payne receiving the homestead—for the same price set by the will—in case of their sudden demise. Finally, Payne, Elletson, and another sister who testified at the hearing all stated that father intended for Payne to have a chance to buy the homestead. Because father intended for Payne to have an option to buy the homestead, the district court did not abuse its discretion by interpreting the will to allow Payne to have the option which he otherwise would have lost due to delays beyond his control.

Still Elletson contends that it would not be inequitable for the court to conclude that Payne's option had lapsed because he was on notice of the deadline. But the court here did not ignore the 180-day period in the interest of equity: determined that father would not want Payne's option to lapse under these circumstances after considering the extrinsic evidence. Elletson has not shown that this conclusion was an abuse of the court's discretion.

In sum, the district court correctly concluded that the will was ambiguous in light of the unexpected delays caused by the pandemic. And the district court did not abuse its discretion by concluding, after considering extrinsic evidence, that father did not intend for Payne to lose his option to purchase the homestead under the circumstances.

Affirmed.