STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0042

In re the Estate of Mark G. Andersen, Deceased.

Filed July 17, 2023
Affirmed
Smith, Tracy M., Judge

St. Louis County District Court
File No. 69DU-PR-21-262

Alan T. Tschida, Shoreview, Minnesota (for appellant Mary Alverson)

J. Steve Nys, Eric S. Johnson, Fryberger, Buchanan, Smith & Frederick, P.A., Duluth, Minnesota (for respondents Paul Staudenmaier Boys and Girls Club of Duluth Foundation and Boys and Girls Clubs of the Northland)

Considered and decided by Smith, Tracy M., Presiding Judge; Jesson, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

This appeal arises from a district court order admitting a copy of Mark G. Andersen's will to probate following a bench trial. Appellant Mary Alverson, decedent's sister, contends that the district court erred by finding that the will was not revoked. We affirm.

FACTS

Decedent Mark G. Andersen[1] executed the disputed will in July 2010. The will was drafted by Steven Overom, Mark's estate planning attorney who had worked with Mark since the early 2000s and knew Mark through their work with the Boys and Girls Club. Mark had served on the board of directors of the Boys and Girls Club from 1991 to 1998 and was involved with establishing its affiliated foundation. That foundation, now known as the Paul Staudenmaier Boys and Girls Club of Duluth Foundation, is the respondent here.

Mark's will appointed his son Jeff as personal representative and Alverson as secondary personal representative. Alverson was not a beneficiary of Mark's will. Mark's descendants—or the Foundation if no descendants survived him—were residuary beneficiaries. Jeff was Mark's only child and predeceased Mark in 2018, without children.

Mark's original will was in Mark's possession before his death on March 9, 2021, but it was not located after his death. Alverson filed a petition for formal adjudication of intestacy, which claimed that Mark died without a will and that Alverson was Mark's sole heir. A copy of Mark's 2010 will was provided to the district court by Overom and by North Shore Bank, Mark's court-appointed conservator before his death. After learning that it was a beneficiary in decedent's will, the Foundation objected to Alverson's petition.

[1] For clarity, we refer to Mark and his son Jeffrey (Jeff) Andersen by their first names.

During the bench trial, Alverson testified about two conversations she had with Mark related to the will. She testified that, when she and Mark discovered in March 2015 that Jeff had stolen about $70,000 and jewelry from Mark, Mark told her that he was going to "change" his will. Alverson also testified that, after Jeff's funeral in 2018, Mark told her that he had "destroyed" his will. According to Alverson, no one else was present for these conversations, Alverson never told anyone that Mark destroyed his will, and Alverson did not know how or when Mark allegedly destroyed his will.

The Foundation's position was that the will was simply lost. Overom and Tim Johnson, an employee of North Shore Bank, testified that they spoke to Mark periodically about his estate plan. Mark changed other parts of his estate plan, including removing Jeff as his power of attorney in August 2015 and identifying Jeff and Alverson as his Individual Retirement Account (IRA) beneficiaries in May 2016. Mark never indicated to his attorney or his conservator that he wanted to change his will.

The Foundation also introduced two 2017 letters discussing Mark's comfort with his will. The first, from Johnson to Alverson, stated that Mark had not "expressed any desire to adjust his estate plan." The second, from an attorney at Overom's law firm to Johnson, stated that Mark "understood the current plan for the disposition of his personal property and maintained his desire to keep the same personal representative and secondary personal representative in place."

The district court admitted Mark's will to probate, finding that Mark did not intend to revoke his will and that Alverson's testimony about the will was not credible. Alverson

moved for amended findings or a new trial. After a hearing, the district court denied the motion.

Alverson challenges the order admitting Mark's will to probate and the order denying her motion for amended findings or a new trial.

DECISION

Generally, contestants of a will have the burden of establishing revocation. Minn. Stat. § 524.3-407 (2022). But when the original version of a will is not produced, there is a common-law rebuttable presumption that the will was revoked if the testator last possessed the will but the will cannot be found after the testator's death. *In re Est. of Langlie*, 355 N.W.2d 732, 735-36 (Minn. App. 1984); *see In re Est. of Pundt*, 157 N.W.2d 839, 841 (Minn. 1968). If the presumption applies, the burden shifts to the proponent of the lost will to make a prima facie showing of nonrevocation. *Langlie*, 355 N.W.2d at 736. "A prima facie showing of nonrevocation compels admission [of the will] to probate unless it does not preponderate over evidence offered by contestant, who has the ultimate burden of persuasion on revocation." *Id.*

It is undisputed that Mark's 2010 will was not found and that the presumption of revocation applies. The sole issue is whether the district court clearly erred in finding that the will was not revoked. Alverson contends that the district court erred by ruling that the Foundation made a prima facie showing of nonrevocation and that the district court improperly disregarded Alverson's testimony as not credible based on a clearly erroneous factual finding.

Our review of a factual finding is limited to whether the district court clearly erred. *In re Est. of Botko*, 541 N.W.2d 616, 618 (Minn. App. 1996), *rev. denied* (Feb. 27, 1996). When applying the clear-error standard, we "view the evidence in a light favorable to the findings" and defer to the credibility determinations of the district court. *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221-22 (Minn. 2021); *see* Minn. R. Civ. P. 52.01 ("Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses."). Our role "is not to weigh, reweigh, or inherently reweigh the evidence." *Kenney*, 963 N.W.2d at 223. Rather, we conduct "a review of the record to confirm that evidence exists to support the decision." *Id.* at 222.

Prima Facie Showing of Nonrevocation

First, Alverson argues that the district court erred by ruling that the Foundation made a prima facie showing of nonrevocation. In its order admitting Mark's will to probate, the district court applied the rebuttable presumption of revocation that applies to Mark's lost will and the Foundation's burden, as the proponent of the will, to make a prima facie showing of nonrevocation. The district court then determined that, based on the testimony and other evidence produced at trial, the Foundation rebutted the presumption that Mark revoked his will and found that Mark did not revoke the will.[2]

[2] After Alverson moved for amended findings or a new trial, the district court, in denying the motion, again explained why the evidence and the law supported its determinations that the Foundation rebutted the presumption of revocation and that Mark did not revoke his will.

The record contains extensive circumstantial evidence that Mark did not revoke his will. Testimony from Mark's estate-planning attorney and conservator established that Mark never expressed a desire to change his will despite multiple meetings with them about his estate plan; that Mark changed other parts of his estate plan but did not remove Jeff or the Foundation as beneficiaries; and that Mark remained comfortable with his estate plan as reflected in the documentary evidence from 2017. As the district court determined—and Alverson does not dispute—the sole evidence that Mark revoked his will was Alverson's own testimony about her conversations with Mark in 2015 and 2018.

Alverson contends that the above evidence does not make a prima facie showing of nonrevocation. She asserts that Mark was not obligated to talk to his attorney or his conservator before revoking his will and that Mark's decisions about his estate, as well as the 2017 letters, predated Jeff's death and thus do not prove that Mark did not revoke the will. We are unconvinced. As the district court explained, the evidence showed that Mark was "competent and understood how to consult with his attorney or conservator regarding changes to his estate plan" and that he "had multiple opportunities to inform either Mr. Overom or Tim Johnson and North Shore Bank of his supposed intent to alter his will but did not do so." As a result, the district court did not err by ruling that the Foundation made a prima facie showing of nonrevocation.

Credibility Determination

Second, Alverson argues that the district court improperly disregarded her unrebutted testimony that Mark destroyed his will. She asserts that the district court's credibility determination regarding her testimony was based on a clearly erroneous

factual finding about Alverson's account of the 2015 conversation with Mark regarding his will, just after Mark and Alverson learned that Jeff had stolen money from Mark. The district court found that, "[a]ccording to Ms. Alverson, personal representative, [Mark] told her in 2015, during a car ride, that he wanted to change his will to disinherit his son Jeff and that he revoked it." Alverson contends that she did not testify that Mark said "he 'wanted to disinherit his son'" or that he 'had revoked' his Will during the 2015 car ride."

As an initial matter, we disagree with Alverson's assertion that the district court's credibility determination was based on a single factual finding about Alverson's testimony. The district court expressly found Alverson's testimony about the will not credible. The district court explained that it "[was] not persuaded by [Alverson's] testimony that she is the only person that [Mark] would inform about his intention to alter his estate plan." As discussed above, we defer to the district court's credibility determination. *LaPoint v. Fam. Orthodontics, P.A.*, 892 N.W.2d 506, 515 (Minn. 2017) (quotation omitted) (noting that the fact-finder "has the advantage of hearing the testimony, assessing relative credibility of witnesses and acquiring a thorough understanding of the circumstances unique to the matter before it"). Indeed, "[a] factfinder is not required to accept even uncontradicted testimony if improbable or if surrounding facts and circumstances afford reasonable grounds for doubting its credibility." *Kenney*, 963 N.W.2d at 224 (quotation omitted).

Moreover, the record supports the district court's finding about the content of Alverson's testimony. In her motion for amended findings or a new trial, Alverson similarly argued that the district court erred in its finding related to her account of the

2015 conversation with Mark. The district court reviewed the trial testimony and acknowledged that Alverson "never specifically used the word 'revoke' to describe [Mark's] alleged actions with the will." But the district court explained that Alverson's testimony "establishes that it was her belief that [Mark] destroyed or revoked the will" and stated that it "continue[d] to find [Alverson's] testimony regarding [Mark's] will to be not credible." Likewise, although Alverson did not specifically testify that Mark wanted to "disinherit Jeff," we discern no error in the district court's characterization of her testimony. If Mark stated that he wanted to change his will just after learning that Jeff—the beneficiary of his will—had stolen a significant amount of money from him, the reasonable inference from that statement is that Mark wanted to change his will to disinherit Jeff. As a result, we disagree that the district court's factual finding was clearly erroneous and are unpersuaded that the district court improperly disregarded Alverson's testimony about the will.

In conclusion, neither the district court's ruling that the Foundation made a prima facie showing of nonrevocation nor the district court's finding related to Alverson's testimony is clearly erroneous. As a result, we discern no error in the district court's finding that Mark did not revoke his will.

Affirmed.