STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1545

In the Matter of the
Jeno F. Paulucci Revocable Trust Under Agreement dated May 1, 1997.

Filed May 6, 2013
Affirmed
Schellhas, Judge

St. Louis County District Court
File No. 69DU-CV-12-524

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Mark J. Briol, Scott A. Benson, Nathaniel J. Zylstra, Briol & Associates, PLLC, Minneapolis, Minnesota (for appellants Michael J. Paulucci and Cynthia J. Selton)

Thomas B. Hatch, Sally M. Silk, Robins, Kaplan, Miller & Ciresi, L.L.P., Minneapolis, Minnesota (for respondents Larry W. Nelson and David H. Simmons)

Considered and decided by Worke, Presiding Judge; Schellhas, Judge; and Hooten, Judge.

U N P U B L I S H E D O P I N I O N

SCHELLHAS, Judge

In this trust dispute, appellant and co-appellants challenge the district court's application of the doctrine of forum non conveniens to dismiss without prejudice their petitions for orders regarding the trust. Co-appellants also argue that the district court violated their due-process rights by dismissing their petition without notice or the right to

be heard. Because the district court did not abuse its discretion in declining to exercise jurisdiction over the trust or in dismissing the petitions and did not violate co-appellants' due-process rights, we affirm.

FACTS

In this trust proceeding, appellant Gina Paulucci is a petitioner who sought an order removing without cause two Florida trustees whom the trust donor, appellant and co-appellants' father, decedent Jeno Paulucci, appointed under the most recent amendment to his revocable trust. Co-appellants Michael Paulucci and Cynthia Selton are petitioners who first joined Gina's petition and then brought a petition of their own seeking an order determining that Jeno's trust amendment was void due to incapacity and undue influence and removing the Florida trustees.

In May 1997, Jeno Paulucci executed the Jeno F. Paulucci Revocable Trust (Jeno Revocable Trust). Also in May 1997, Lois Paulucci, his wife, executed the Lois Mae Paulucci Revocable Trust (Lois Revocable Trust), which is a mirror image of the Jeno Revocable Trust, except that the Lois Revocable Trust gave Lois limited testamentary powers of appointment. Jeno and Lois's children, Gina, Michael, and Cynthia, and their issue are among the beneficiaries of these trusts. Jeno had earlier established another trust in August 1996, governed by Minnesota law, for the benefit of Lois (Trust FBO Lois), which is subject to provisions of a 1996 Trust Agreement of Jeno Paulucci that also gave Lois limited testamentary powers.

Jeno and Lois were residents of Florida, but in October 2011, Jeno was hospitalized in Duluth. On October 8, while hospitalized, Jeno executed the Thirteenth

Complete Amendment to the Jeno Revocable Trust. This amendment replaced two Minnesota trustees, attorneys William Berens and George Eck, with two Florida trustees, respondents Larry Nelson, who worked with Jeno for a number of years, and David Simmons, a trial attorney and state senator. On October 10, Lois executed the Tenth Complete Amendment to the Lois Revocable Trust, which likewise replaced trustees Berens and Eck with Nelson and Simmons.

Lois died on November 20, 2011, and Jeno died on November 24, 2011. Trustee Nelson is the personal representative of Jeno's and Lois's probate estates and both wills have been admitted to probate in a Florida circuit court. Lois's will, which is governed by Florida law, provides that the residue of her estate is to be given to the trustee of the Lois Revocable Trust.

In March 2012, Gina petitioned the St. Louis County district court for, among other relief, the non-cause removal of trustees Nelson and Simmons of the Jeno Revocable Trust, to be replaced by former trustees Berens and Eck. Gina venued this petition in St. Louis County under Minn. Stat. § 501B.17, subd. 1(3) (2012),[1] because the trust holds real property in St. Louis County. Later in March, Michael and Cynthia filed a notice of appearance in the St. Louis County action. On March 30, trustees Nelson and Simmons filed a memorandum objecting to the removal petition based on lack of jurisdiction (then under the mistaken belief that the trust held no real property in

[1] We cite the most recent version of Minn. Stat. § 501B.17 because it has not been amended in relevant part. *See Interstate Power Co. v. Nobles Cnty. Bd. of Comm'rs*, 617 N.W.2d 566, 575 (Minn. 2000) (stating that, generally, "appellate courts apply the law as it exists at the time they rule on a case."). For the same reason, we also cite the current versions of other statutes cited in this opinion.

Minnesota) and on the doctrine of forum non conveniens. The district court scheduled a hearing on the matter for April 3, 2012.

Meanwhile, in early February 2012, Berens and Eck, as trustees of the Trust FBO Lois, petitioned the Hennepin County district court for instructions regarding the disposition of that trust's assets and proposed an alternate disposition of the assets, alleging that Lois had intentionally exceeded her limited testamentary powers of appointment and subjected the trust assets to debts, expenses, and taxes. In late February 2012, Gina also petitioned the Hennepin County district court for, among other things, the non-cause removal of Nelson and Simmons as trustees of the Lois Revocable Trust, to be replaced by Berens and Eck. Gina venued the petition in Hennepin County district court under Minn. Stat. § 501B.17, subd. 2 (2012), which provides that when there have been prior trust proceedings—here, the Trust FBO Lois petition—a petition must be filed in the same court.

The St. Louis County district court, which was aware of the Hennepin County proceedings, conducted the April 3 hearing to address Gina's petition for the removal of Nelson and Simmons as trustees of the Jeno Revocable Trust and the trustees' objections to their removal, which they based on jurisdictional and forum-non-conveniens grounds. Michael and Cynthia appeared at the hearing as interested parties because they are beneficiaries, and, at the hearing, Gina filed joinders of the beneficiaries, including Michael and Cynthia, in her petition. The court advised the parties that it had contacted the Hennepin County district court to address its concern that the two courts might issue conflicting orders. At the close of the hearing, the court permitted Gina, as well as

Michael and Cynthia, to file written replies to the objections by trustees Nelson and Simmons, and they did so, addressing both the merits of Gina's removal petition and the jurisdictional and forum-non-conveniens objections raised by trustees Nelson and Simmons.

After the April hearing, the St. Louis County district court informally stayed the proceedings while some or all of the parties unsuccessfully attempted to mediate their disputes. The court then gave counsel until July 18 to file responsive pleadings. On July 13, 2012, Michael and Cynthia petitioned the St. Louis County district court, in relevant part, for a determination that the thirteenth amendment to the Jeno Revocable Trust was void based on incapacity and undue influence by trustees Nelson and Simmons and to remove them as trustees, to be replaced by Berens and Eck. On July 16, the court scheduled Michael and Cynthia's petition for a September 2012 hearing. In a July 16 letter, the court advised the parties that whether this hearing took place depended on their review of the instant letter, informed them that the court believed counsel wanted a determination of whether Minnesota or Florida had jurisdiction over the matter, and told them to inform the court immediately if this was in error. Gina submitted a supplemental brief on July 18, but Michael and Cynthia filed nothing further with the court. The court then allowed trustees Nelson and Simmons until July 26 to file a reply to Gina's supplemental brief, and they did so.

In an August 1, 2012, order, the St. Louis County district court concluded, "Florida is the proper jurisdiction and venue to hear all matters pertaining to the Thirteenth Complete Amendment to the Trust Agreement of Jeno F. Paulucci," and

dismissed the action without prejudice. And the court ruled that any pending petitions would not be considered, which we construe as dismissals without prejudice of those petitions. The court also denied appellant and co-appellants permission to move for reconsideration.

On September 12, 2012, the Hennepin County referee recommended dismissal of the Lois Revocable Trust petition without prejudice, following the St. Louis County district court's decision, and the Hennepin County district court adopted the recommendation. Upon notice of review, the Hennepin County district court held a hearing and on January 8, 2013, issued an order on the merits affirming the referee's dismissal of the petition. The Hennepin County district court also affirmed a stay of the Trust FBO Lois petition, which is governed by Minnesota law, pending resolution by a Florida court of the interpretation of Lois's will and her testamentary intent in drafting the amendment to the Lois Revocable Trust. Gina appealed the Hennepin County district court order in appeal A13-0411, and this court granted her motion to stay the appeal pending resolution of the present appeal.

Finally, Michael and Cynthia petitioned a Florida circuit court for removal of Nelson as the personal representative of Jeno Paulucci's estate. They also filed complaints which in pertinent part sought a determination that the thirteenth amendment to the Jeno Revocable Trust and the tenth amendment to the Lois Revocable Trust were void, removal of Nelson and Simmons as trustees, and appointment of Berens and Eck in their place, and there may have been additional filings as well. All of the above three actions were dismissed without prejudice and Michael and Cynthia were given until

December 21, 2012, to file new proceedings. The current status of the Florida litigation is not known.

This appeal is taken from the St. Louis County district court's orders dismissing appellant's and co-appellants' petitions without prejudice and denying them permission to move for reconsideration.

D E C I S I O N

I.

"Jurisdiction is a question of law that we review de novo." *In re Comm'r of Pub. Safety*, 735 N.W.2d 706 (Minn. 2007) (quotation omitted). "A forum non conveniens determination is committed to the sound discretion of the trial court, to which substantial deference is given." *Paulownia Plantations de Panama Corp. v. Rajamannan*, 793 N.W.2d 128, 133 (Minn. 2009) (quotations omitted). An appellate court will not reverse the district court's decision unless there was an abuse of discretion, based on an erroneous legal conclusion or a clearly erroneous factual conclusion. *Id.*

A trustee or any interested person may petition the district court for an order concerning a trust. Minn. Stat. § 501B.16 (2012). The petition may be filed in the district court for any county in which real estate held by the trust is situated. Minn. Stat. § 501B.17, subd. 1(3) (2012). Here, the Jeno Revocable Trust held real estate located in St. Louis County.

> Once a district court has assumed jurisdiction of a trust, the district court has jurisdiction as a proceeding in rem, until jurisdiction is transferred to another court or terminated by court order. This chapter does not limit or abridge the

> power or jurisdiction of the district court over trusts and trustees.

Minn. Stat. § 501B.24 (2012).

The St. Louis County district court analyzed whether Minnesota has jurisdiction over the Jeno Revocable Trust and concluded that it did under *In re Sheridan*, 593 N.W.2d 702, 705−07 (Minn. App. 1999) (applying factors for jurisdictional analysis of trust petition, where trust held no real property in Minnesota). *See also* Minn. Stat. §§ 501B.17, subd. 1(3), .24. In this appeal, all parties agree, as do we, that the district court correctly ruled that it had jurisdiction over the trust, and we see no need to analyze the issue further.

Gina, Michael, and Cynthia contend that the district court abused its discretion in declining to exercise its jurisdiction over the Jeno Revocable Trust petitions and instead finding Florida the more convenient jurisdiction. "The doctrine of forum non conveniens allows a district court with jurisdiction over the subject matter and the parties discretion to decline jurisdiction over a cause of action when another forum would be more convenient for the parties, the witnesses, and the court." *Paulownia*, 793 N.W.2d at 133. Resident citizens, as well as nonresident citizens or noncitizens of the state, are subject to the forum-non-conveniens doctrine; the fact of Minnesota residency is not relevant except as it may bear on the convenience of the parties under the doctrine. *Hague v. Allstate Ins. Co.*, 289 N.W.2d 43, 45–46 & n.2 (Minn. 1978). A strong presumption exists in favor of the plaintiff's choice of forum. *Paulownia*, 793 N.W.2d at 137. In a forum-non-conveniens analysis, the court must weigh the private- and public-interest factors of

each forum to determine whether the presumption has been successfully rebutted. *Bergquist v. Medtronic, Inc.*, 379 N.W.2d 508, 511 (Minn. 1986).

As an initial matter, we note that the parties apparently failed to bring *Paulownia* to the attention of the district court, which also did not cite the decision in its order. But this is of no particular significance, because *Paulownia* did not introduce any new law on the doctrine of forum non conveniens, but instead relied on long-standing existing law. *See Paulownia*, 793 N.W.2d at 137 (citing *Hague*, 289 N.W.2d at 46, for analysis of the private-interest factor); *see also Bergquist*, 379 N.W.2d at 511 n.4 (citing the same private- and public-interest factors as cited in *Paulownia*, 793 N.W.2d at 137).

We next review the district court's analysis of the private-interest factors, which are as follows:

> (1) the relative ease of access to sources of proof; (2) availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; (3) possibility of view of premises, if view would be appropriate to the action; and (4) all other practical problems that make trial of a case easy, expeditious, and inexpensive.

Paulownia, 793 N.W.2d at 137 (quoting *Hague*, 289 N.W.2d at 46 (quotation marks and other quotation omitted)). None of the parties assert that a view of the premises is relevant here.

In relevant part, the district court found that the trust assets and records are found in both Florida and Minnesota, noting that a website of some 6,500 pages of estate and trust documents was available through counsel for trustees Nelson and Simmons. The court concluded that the availability of information favors Florida. Appellant and co-

appellants dismiss the significance of the physical location of the trust and estate documents in Florida, in light of the modern electronic age. *See In re Corel Corp. Sec. Litig.*, 147 F. Supp. 2d 363, 366 (E.D. Pa. 2001) (noting that "the initial repository of most relevant documents . . . is of lesser significance in the modern electronic age"). Trustees Nelson and Simmons, while noting that most of the records relating to the Jeno trusts and estates are in Florida, concede that this factor favors neither side. In addition, Gina contends that she has filed with the St. Louis County district court the only relevant sources of proof, which are primarily the trust instrument, the consents of the beneficiaries, and the curricula vitae of Eck and Berens.

The next private-interest factor considered by the district court was the "availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses." *Paulownia*, 793 N.W.2d at 137. The district court addressed the cost of obtaining attendance of willing witnesses, finding that all of the witnesses have the financial wherewithal to travel to Florida. *Id.* As to the past and present trustees, the court found that each had fiduciary and legal obligations to the trusts in Florida or Minnesota, making it inconvenient for any of them to travel. The court found that because most of the beneficiaries were located in Minnesota, it was the more convenient forum for the witnesses, although, as we discuss below the distribution of the beneficiaries is fairly even.

Gina agrees with the district court that the convenience-of-the-witness factor weighs in favor of Minnesota. But Michael and Cynthia contend that the district court did not acknowledge or identify any of the witnesses relating to their petition seeking to void

the thirteenth amendment based on incapacity and undue influence or address their inability to compel the Minnesota witnesses to testify in Florida. Because they failed to make these arguments to the district court, we decline to consider these matters for the first time on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) ("A reviewing court must generally consider only those issues that the record shows were presented and considered by the trial court in deciding the matter before it.") (quotation omitted). Regardless, we agree with trustees Nelson and Simmons that testimony of medical personnel sought by Michael and Cynthia would likely be taken by video deposition.

Finally, the court must consider "all other practical problems that make trial of a case easy, expeditious, and inexpensive." *Paulownia*, 793 N.W.2d at 137. Although *Paulownia* does not address the specifics of this factor, another supreme court decision addressing a trust did. *In re Florance*, 360 N.W.2d 626, 630–31 (Minn. 1985). Gina, Michael, and Cynthia contend that by relying on *Sheridan*, 593 N.W.2d at 705, the district court applied the incorrect standards in determining the proper forum for resolution of the petitions. But *Sheridan* cites *Florance*, which sets out factors to consider in analyzing the issue of forum non conveniens in the context of a trust case. *Sheridan*, 593 N.W.2d at 705–06 (citing *Florance*, 360 N.W.2d at 630–31). We see no error in the district court's citation to these factors.

Among the factors relevant to the practicalities of holding a trial in a trust matter are the residences of the beneficiaries and trustees, where the estate is being probated, the location of the trust assets, and which court is closer to resolving the litigation. *Florance*,

360 N.W.2d at 630. The court found that a majority of beneficiaries resided in Minnesota, rather than in Florida, although the parties agree that one of the Minnesota beneficiaries is a Florida resident, making the number of individual beneficiaries in Minnesota and Florida equal; two individual beneficiaries reside elsewhere. The court counted a charitable beneficiary as a Minnesota resident, although the record seems to indicate otherwise, and the court made no finding as to a family trust beneficiary. As to other factors, the present trustees reside in Florida, while the former trustees reside in Minnesota. No party disputes that Jeno's and Lois's estates are being probated in Florida. Further, the majority of the trust assets are in Florida. The court also recognized that litigation was pending in both Minnesota and Florida and that additional petitions have been filed in Florida and in Hennepin County and St. Louis County; the merits of the petitions have not been reached in Minnesota.

Other relevant factors not already considered herein include the length of time the trust had been administered; which forum is "at home with the state law that must govern the case"; and the donor's instruction as to the situs for the administration of the trust and governing law. *Id.* at 630–31 (quotation omitted). The trusts have been administered in Florida since October 2011, when the most recent amendments provided that Nelson and Simmons should be trustees. As the district court recognized, the trust provides: "All matters relating to the execution of this agreement shall be determined under the applicable laws of the State of Florida."

Gina contends that she is not challenging the execution of the agreement, but instead is pursuing a no-cause removal petition based on the unanimous request of the

beneficiaries, so that the provision does not apply. But this too is governed by Florida law under the terms of the trust, which also provides that other matters, including the interpretation and construction of the agreement and the enforcement of all rights and remedies afforded to any beneficiary or trustee, are to be determined "under the laws of the state which is then the trust situs." *See In re Thorne's Estate*, 145 Minn. 412, 418, 177 N.W. 638, 640 (1920) (holding that the situs of the trust was in Minnesota based on the fact that corpus of trust was kept and managed in Minnesota and the president, secretary, and office force were in Minnesota, despite the fact that some business was conducted in New York, where two of four of the trustees resided and where the trust was executed); *see also* 90 C.J.S. *Trusts* § 224 (2010) ("The situs of a trust, meaning the place of performance of the trustee's active duties, is determined from various factors, particularly, the donor's intent and the place of administration.").

Gina also contends that the analysis as to all other practical problems that make trial of a case easy, expeditious, and inexpensive do not apply to her petition to remove current trustees. We disagree. To obtain non-cause removal of the trustees under Florida law, the removal must be requested by all of the qualified beneficiaries, and the court must find that removal of the trustees "best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust." Fla. Stat. § 736.0706(2)(d) (2012); *accord* Minn. Stat. § 501B.16(9)(v) (containing similar provisions for removal of trustee). Nelson asserted in an affidavit that extensive discovery will be necessary on this point in Florida, where key witnesses reside and key documents including the estate planning documents and correspondence between Jeno and his children can be found.

The factors cited by the district court are relevant to resolution of Gina's petition to remove the trustees.

Having concluded our review of the district court's consideration of the private-interest factors, we now turn to the public-interest factors. The only public-interest factor that the court deemed relevant here was "the interest in having the trial of a diversity case in a forum that is familiar with the law that must govern the action." *Paulownia*, 793 N.W.2d at 137; *see also Bergquist*, 379 N.W.2d at 511–12 & n.4 (summarizing public-interest factors and Minnesota cases addressing such factors). While there was no showing that Florida law would be particularly complex to construe, the district court concluded that Florida would be the most economical, logical, and efficient forum for construing the trust amendment and related matters.

Gina contends that the mere fact that another state's law is different is an insufficient reason to decline jurisdiction, and that only when the law of the other state may present serious or complex issues does this factor become more important. *See Florance*, 360 N.W.2d at 631. Further, she asserts that both states' removal statutes are based on section 706 of the Uniform Trust Code. Michael and Cynthia assert that even if Florida law applies, Minnesota courts are more than capable of applying Florida law. Nonetheless, the supreme court has recognized the "appropriateness, too, in having the trial of a diversity case in a forum that is at home with the state law that must govern the case, rather than having a court in some other forum untangle problems in conflict of laws, and in law foreign to itself." *Bergquist*, 379 N.W.2d at 511 n.4 (quotation omitted).

Finally, a district court is required to balance the private- and public-interest factors in determining whether a defendant has successfully rebutted the presumption in favor of the petitioner's choice of forum. *Bergquist,* 379 N.W.2d at 511. The district court here concluded that Florida would be the most economical, logical, and efficient forum for construing the trust amendment, supervising the administration of the trust, and concluding the estate proceeding because a majority of the real estate is in Florida where the trust and the estate are being administered and probate has been filed.

As a preliminary matter, we address the argument by trustees Nelson and Simmons that this presumption applies to disputes involving only two parties, rather than the "many" parties in this case. *See Behm v. John Nuveen & Co.*, 555 N.W.2d 301, 308 n.5 (Minn. App. 1996) (citing *Koster v. Lumbermen's Mut. Cas. Co.*, 330 U.S. 518, 527, 67 S. Ct. 828, 832 (1947)) (applying exception to presumption for a shareholder derivative suit in which there were hundreds of potential plaintiffs as well as many home courts). Where, as here, there are three appellants and two respondents and a choice of only two jurisdictions, the general rule applies.

Michael and Cynthia argue that neither the trustees nor the court addressed the forum-non-conveniens analysis as it related specifically to their petition to void the thirteenth amendment. Again, they did not make these arguments to the district court and may not raise them for the first time on appeal. *Thiele*, 425 N.W.2d at 582. Gina, Michael, and Cynthia assert that the district court abused its discretion in addressing the presumption in its analysis because it failed to address all of the private- and public-

interest factors. But as our above analysis shows, the district court—without labeling the factors as private or public—addressed them in an extensive review.

Gina, Michael, and Cynthia contend that the court failed to apply the strong presumption in favor of the petitioners' choice of forum, arguing that when the court erroneously considered the jurisdictional factors, which the proponent of jurisdiction has the burden of proving, it could not have properly applied the presumption in their favor. *See C.H. Robinson Worldwide, Inc. v. FLS Transp., Inc.*, 772 N.W.2d 528, 533 (Minn. App. 2009) (providing that "[o]nce a defendant challenges personal jurisdiction, the burden of proof is on the plaintiff to show the jurisdiction exists."). Here, the district court recognized that "[t]here is a presumption in favor of the petitioner's choice of a Minnesota forum." The way in which a court determines whether the presumption in favor of the petitioners' choice of forum has been successfully rebutted is to balance the private- and public-interest factors. *Bergquist*, 379 N.W.2d at 511. The fact that the court considered facts relevant to its jurisdictional analysis does not mean that it confused the jurisdictional burden of proof with the presumption in favor of petitioners. The claim that the district court did not apply the presumption in favor of the petitioners' choice of forum is belied by the extensive analysis that it conducted of the private- and public-interest factors. While some factors did not lean definitively toward one or the other choice of forum, the district court's conclusion that Florida would be the most economical, logical, and efficient forum for construing the trust amendment was not an abuse of discretion because it was neither clearly erroneous nor incorrect as a matter of law.

We conclude that the district court properly addressed the doctrine of forum non conveniens and did not abuse its discretion by declining to exercise jurisdiction in Minnesota, in favor of adjudication by a Florida court, or by dismissing without prejudice appellant's and co-appellants' petitions.

II.

Next, we address Michael and Cynthia's argument that the district court denied their due-process rights because it dismissed their petition seeking a determination that the thirteenth amendment was void, despite the fact that no party objected to it, without giving them the opportunity to argue against the dismissal. They contend that the only question before the district court was whether Gina's petition should be dismissed based on the doctrine of forum non conveniens. "Due process requires notice before judgment and an opportunity to be heard in an orderly proceeding adapted to the nature of the case . . ." *Hunter v. Zenith Dredge Co.*, 220 Minn. 318, 326, 19 N.W.2d 795, 799 (1945). Whether a due-process violation has occurred is an issue of law reviewed de novo. *Sawh v. City of Lino Lakes*, 823 N.W.2d 627, 632 (Minn. 2012). An appellate court will not reverse the district court's decision as to forum non conveniens unless there was an abuse of discretion. *Paulownia*, 793 N.W.2d at 133.

The district court's order on the jurisdictional and forum-non-conveniens issues regarding the Jeno Revocable Trust was pending when Michael and Cynthia petitioned the St. Louis County district court on July 12, 2012, to declare the thirteenth amendment void, and the court assigned to the petition the same case number as Gina's petition. The following day, the court set this petition on for hearing on September 18, 2012, by order.

But on July 16, the district court advised all parties by letter that although it ordered a September hearing on co-appellants' petition, "Whether that hearing takes place or not depends on your review of this letter." The court told counsel that it believed counsel wanted the court to determine whether Minnesota or Florida had jurisdiction over the trust. The court further advised that if it determined that Florida had jurisdiction, the Hennepin County district court would follow its lead, and if it determined Minnesota had jurisdiction, the St. Louis County matter would be transferred to Hennepin County. The court explicitly stated that if it was "in error regarding the expectations of counsel regarding the status of the St. Louis County matter" that the parties should advise the court immediately, because it would be taken under advisement as of July 18, 2012.

Michael and Cynthia contend that they did not receive the court's letter until July 18, and the next day, they received the court's e-mail advising that the record was closed as to Gina, Michael, and Cynthia. Michael and Cynthia knew that the "jurisdiction" issue the district court was referring to included the issue of forum non conveniens, because trustees Nelson and Simmons had initially briefed that issue and Michael and Cynthia had filed a response relating to Gina's petition, before they filed a petition of their own. Nonetheless, Michael and Cynthia filed nothing with the district court within the deadline to argue that there were special considerations in applying the doctrine of forum non conveniens that would lead the court to conclude that regardless of how it ruled on Gina's removal petition, the court should exercise jurisdiction over their petition to declare the thirteenth amendment void. Nor did they seek additional time from the court to do so when they received the letter, or even when they received the e-mail

from the court. Instead, Michael and Cynthia did not make this argument until they moved for reconsideration, following the court's order ruling that a Florida court should exercise its jurisdiction over the trust. And the court denied their request for permission to seek reconsideration.

The record demonstrates that Michael and Cynthia had notice and an opportunity to be heard before the district court issued its order, but they did not avail themselves this opportunity. *Hunter*, 220 Minn. at 326, 19 N.W.2d at 799. The court did not deprive Michael and Cynthia of their right to due process and did not abuse its discretion by dismissing without prejudice their petition to declare the thirteenth amendment to the Jeno Revocable Trust void.

Affirmed.