STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2319

Muriel Jean Bellino by her conservator and guardian, Annette C. Bellino,
Respondent,

vs.

Gregory J. Bellino, individually and in his capacity as executor of the
Estate of Eugene Bellino,
Appellant,

Joann Bellino,
Defendant.

Filed August 12, 2013
Affirmed
Larkin, Judge

Beltrami County District Court
File No. 04-CV-11-43

James C. Fischer, Fischer Law Office, PLLC, Bagley, Minnesota (for respondent)

John Remington Graham, St-Agapit, Quebec G0S 1Z0, Canada (for appellant)

Considered and decided by Larkin, Presiding Judge; Halbrooks, Judge; and Willis, Judge.[*]

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

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

LARKIN, Judge

Appellant challenges the district court's denial of his pretrial motion for summary judgment and its posttrial award of judgment for respondent. Appellant argues that the district court erred by refusing to dismiss respondent's lawsuit based on the doctrine of unclean hands and that the district court's findings of fact are clearly erroneous. We affirm.

FACTS

Respondent Muriel Jean Bellino is an 85-year-old vulnerable adult who is restricted to a wheelchair and unable to speak. She and her husband Eugene Bellino, who died in 2007, are the biological parents of ten children, including appellant Gregory Bellino; respondent's conservator and guardian, Annette Bellino; and defendant Joann Bellino. Appellant had a good relationship with his parents and has lived at his parents' residence in Bemidji for most of his life.[1] In March 2007, appellant, Eugene, and Annette became respondent's co-guardians and co-conservators. In November 2007, Annette became respondent's temporary guardian and conservator, and in March 2008, Annette became respondent's permanent guardian and conservator. Annette has lived with and cared for respondent since October 2007.

Annette commenced the underlying equitable action on respondent's behalf. The complaint alleges that appellant used an invalid power of attorney to convert respondent's

[1] In 1995, appellant's parents conveyed their interest in their Bemidji home to appellant, reserving a life estate. Appellant continues to reside in the home.

property to his own use, including approximately $900,000 in stocks, bonds, CDs and cash; respondent's house in Texas, as well as its contents; and the contents of respondent's Bemidji home. The complaint was amended to allege that Joann Bellino assisted appellant in having the power of attorney notarized. The requests for relief include an accounting and imposition of a constructive trust. Appellant and Joann moved for summary judgment, arguing that the doctrine of unclean hands barred respondent's request for equitable relief. The district court denied the motion.

The district court held a two-day bench trial, which addressed the validity of a power of attorney purportedly signed by respondent on December 9, 2004, and appellant's transfer of a significant number of respondent's assets to himself under that power of attorney. The power of attorney is acknowledged by notary public Michelle Boreen and grants broad powers to appellant and Eugene to act as attorneys-in-fact for respondent, including the power to transfer respondent's assets to themselves.

Counsel for respondent introduced respondent's 2004 medical records as proof of respondent's mental and physical health shortly before execution of the power of attorney. According to the medical records, respondent was admitted to a hospital on June 23, 2004, based on her primary physician's concerns about her deteriorating cognitive abilities. Upon admission, respondent was unable to answer questions, to identify the type of building she was in, or to eat without assistance. She also had difficulty forming words, including her own name, and she demonstrated obvious problems with attention, concentration, memory, and language. Respondent was diagnosed with severe Alzheimer's dementia.

On July 6, 2004, respondent underwent a psychological evaluation, which describes her as "severely cognitively impaired as a result of late stage Alzheimer's Disease." The evaluator noted that she exhibited confusion, disjointed thoughts, and a lack of short-term memory; her verbal communication was impaired; and she was unable to care for or identify herself. Respondent was discharged from the hospital on July 7. A psychiatric assessment and progress notes from four follow-up outpatient appointments between September 1 and October 12, 2004, indicate that respondent's insight and judgment were poor, her speech was impaired, and her thought processes were unorganized.

Appellant testified that respondent's cognitive functioning improved after October 2004 because she was less medicated. Similarly, Joann testified that respondent was "acting just fine" at home between September and early December 2004 and that she voted in November 2004. Joann also testified that Eugene and respondent asked her to notarize a power-of-attorney document for respondent during this period of time. Joann provided them with a list of her coworkers who were notaries and suggested that it would be more appropriate to use one of them since she was a relative. Boreen was one of the people on Joann's list.

Boreen testified that as a county employee, she notarized documents for both coworkers and strangers. Boreen explained that it was her regular practice to have the signatory sign in her presence but that a coworker occasionally provided her a stack of previously executed documents to notarize. Boreen testified that she did not recall

meeting respondent or appellant, but she acknowledged that her notary signature and stamp were on the power of attorney.

Beltrami County Sheriff's Investigator Scott Hinners investigated the events surrounding the notarization of the power of attorney. He interviewed Boreen in August 2008 and prepared a report stating that Boreen said she had reason to believe that the power of attorney had been presented to her in a stack of papers to be signed and stamped by a notary public.

Two witnesses opined that the signature on the power of attorney was not respondent's. Brenda Anderson, a forensic document examiner, testified that, in her expert opinion, the signature on the power of attorney was not genuine. For reasons explained in its order, the district court did not credit Anderson's opinion. Annette also testified that, in her opinion, the signature on the power of attorney was not respondent's. Her opinion was based on her familiarity with respondent's signature.

Regarding the issue of appellant's asset transfers, Thomas O'Halloran, a forensic accounting specialist, testified that from February 9, 2007, to October 31, 2008, appellant transferred in excess of $900,000 from a joint account at the First National Bank of Bemidji held in appellant and his parents' names to accounts at several other banks. According to O'Halloran's report, there was $948,563.40 in the joint account at First National Bank in February 2007, and no money in the account as of March 2008. Furthermore, as of October 2008, there was $887,717 in accounts held only in appellant's name at American National Bank, Citizens State Bank, and American Federal Bank.

Appellant testified that he added his name to respondent's house in Texas, cashed respondent's savings bonds totaling $57,515, and transferred respondent's stocks in the amount of $115,977 to his accounts, using the power of attorney. Although somewhat confusing, appellant's testimony indicates his belief that the money in the First National Bank account, the house, the bonds, and the stocks were his based on (1) gifts his parents had given him on a yearly basis up until the year 2000, (2) loans he had made to respondent according to an oral agreement, so she could gift and lend money to appellant's siblings and pay expenses, and (3) reimbursement for payments he had made on behalf of respondent. Appellant also testified that he had saved some of the money in the accounts from his employment, but he admitted that he has not been employed since 1997.

According to appellant, he had accumulated $500,000 in gifts from his parents by 1990. Appellant testified that respondent was only on the bank accounts for FDIC purposes and that respondent pledged the stock as collateral for the loans she received from him. Appellant testified, "I can clarify . . . that the loans and gifts that were being made to these other siblings [by respondent] were coming from assets that were mine that [respondent] was borrowing from me in exchange for stock. And that is what the stock transfer had to do with was that I was repaying myself for agreements that my mother and I had had throughout the years." Appellant further testified that he started transferring money out of the First National Bank account in 2007 to protect himself after he discovered that Annette had opened his mail.

The district court found that (1) respondent did not have adequate mental capacity to sign a power of attorney in December 2004 and that appellant knew or should have known respondent was not competent to do so; (2) the December 2004 power of attorney was not signed by respondent and appellant knew it; and (3) appellant improperly transferred $1,061,209 in assets—including $887,717 from the First National Bank account, $57,515 in U.S. Savings bonds, and $115,977 in stocks—as well as respondent's house in Texas to himself. The district court awarded judgment for respondent in the amount of $1,061,209, and ordered appellant to convey his interest in the Texas house to respondent and allow Annette to retrieve all of respondent's personal property from the Bemidji house. The district court denied appellant's motion for amended findings of fact, conclusions of law, and order for judgment, and it dismissed the amended complaint against Joann with prejudice. This appeal follows.

D E C I S I O N

I.

Appellant argues that the district court erred by refusing to dismiss respondent's lawsuit based on the doctrine of unclean hands. Appellant contends that Annette has unclean hands because (1) she opened and used his mail to secure her appointment as respondent's conservator and (2) her attorney sent Joann a letter, threatening to sue her and to prevent her from inheriting from respondent if she did not change her previous testimony in favor of appellant. Respondent counters that the district court's ruling regarding the unclean-hands doctrine is not within the scope of appeal "[b]ecause the

conduct complained of by Appellant as unclean hands was not entered into evidence at the trial."

Application of the unclean-hands doctrine was raised and determined in the context of appellant's motion for summary judgment. "[A] district court's denial of a pretrial motion for summary judgment is within the scope of appellate review when the denial of summary judgment was based on a question of law." *Schmitz v. Rinke, Noonan, Smoley, Deter, Colombo, Wiant, Von Korff and Hobbs, Ltd.*, 783 N.W.2d 733, 735 (Minn. App. 2010), *review denied* (Minn. Sept. 21, 2010).

In denying summary judgment, the district court noted that the underlying facts were "generally not in dispute" and that appellant argued that the unclean-hands doctrine barred recovery "as a matter of law." The district court ruled that "[b]ecause the conduct complained of by [appellant] as unclean hands is not so connected or so egregious as to require that this matter be dismissed as a matter of law, [appellant's] motion for summary judgment is denied." Because the district court's summary-judgment denial was based on a legal determination, the ruling is within the scope of this appeal, and we review the ruling de novo. *See SCI Minn. Funeral Servs., Inc. v. Washburn-McReavy Funeral Corp.*, 795 N.W.2d 855, 860-61 (Minn. 2011) (stating that although a deferential standard of review is appropriate where the district court balances the equities and decides not to award equitable relief, de novo review is applied when the district court determines, in summary-judgment proceedings, that equitable relief is not available as a matter of law).

Under the doctrine of unclean hands, "he who seeks equity must do equity, and he who comes into equity must come with clean hands." *Hruska v. Chandler Assocs., Inc.*,

372 N.W.2d 709, 715 (Minn. 1985) (quotation omitted). A party "may be denied relief where his conduct has been unconscionable by reason of a bad motive, or where the result induced by his conduct will be unconscionable either in the benefit to himself or the injury to others." *Johnson v. Freberg*, 178 Minn. 594, 597-98, 228 N.W. 159, 160 (1929). But "[t]he [doctrine of unclean hands] does not apply where the relief sought by the plaintiff and the equitable right claimed by the defendant belong to or grow out of two entirely separate and distinct matters or transactions." *Lindell v. Lindell*, 150 Minn. 295, 298-99, 185 N.W. 929, 930 (1921).

> [The defendant's] adverse equity must grow out of the very controversy before the court or out of such transactions as the record shows were part of its history, or where it is so connected with the cause in litigation as to be presented in the pleadings and proofs, with full opportunity afforded to the plaintiffs to explain or refute the charges.

Id. at 299, 185 N.W. at 930. Thus, "unclean hands in a collateral matter is not a defense to equitable relief." *Berg v. Carlstrom*, 347 N.W.2d 809, 812 (Minn. 1984). And it is irrelevant whether anyone other than the one seeking equitable relief acted with unclean hands. *Heidbreder v. Carton*, 645 N.W.2d 355, 371 (Minn. 2002).

The district court reasoned that Annette's "opening of mail addressed to [appellant] is not so connected to this matter that the doctrine of unclean hands would require dismissing this lawsuit on equitable grounds." *See Lindell*, 150 Minn. at 298-99, 185 N.W. at 930. We agree. The complained-of conduct is that "[Annette] opened and used mail from [appellant's] private bank, and addressed to him personally, then removed the contents, submitted them to her lawyer, and her lawyer used the papers thus

unlawfully obtained as part of his case to get her appointed as conservat[or]." Thus, appellant's purported equitable right grows out of the proceeding in which Annette was appointed as respondent's conservator; whereas respondent's request for equitable relief grows out of appellant's misappropriation of her assets. The two transactions are separate and distinct.

With regard to Annette's attorney's conduct, although sending the letter to Joann is more closely related to the underlying matter in this case, neither Annette nor her attorney is a party seeking relief in this matter. Respondent was the intended beneficiary of equitable relief in the underlying lawsuit. Annette and her attorney's unclean hands do not provide a basis to deny *respondent* equitable relief. *See Heidbreder*, 645 N.W.2d at 371 (stating that "it is irrelevant whether anyone other than [the one seeking equitable relief] acted with 'unclean hands'").

Lastly, we observe that courts of equity apply the doctrine of unclean hands not "by way of punishment for extraneous transgressions, but upon considerations that make for the advancement of right and justice." *Keystone Driller Co. v. Gen. Excavator Co.*, 290 U.S. 240, 245, 54 S. Ct. 146, 148 (1933). Application of the doctrine to bar respondent's recovery based on Annette's extraneous transgressions would not be right or just. Even if the district court had determined that Annette's participation in the underlying lawsuit was not appropriate under the doctrine of unclean hands, it does not follow that the dismissal was the proper remedy. Less drastic alternatives, such as removing Annette and appointing another individual to sue on respondent's behalf, would have been just. *See* Minn. Stat. § 524.5-112(b) (2012) (providing for removal of a

conservator if in the best interests of the protected person or for other good cause); Minn. Stat. § 524.5-417(c)(3) (2012) (authorizing a conservator to sue on behalf of and represent the protected person in any court proceedings).

In sum, the district court correctly concluded that the doctrine of unclean hands did not bar respondent's request for equitable relief.

II.

Appellant challenges the posttrial award of judgment for respondent, assigning error to several of the district court's factual findings. "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." Minn. R. Civ. P. 52.01. "In applying this rule, we view the record in the light most favorable to the judgment of the district court." *Rogers v. Moore*, 603 N.W.2d 650, 656 (Minn. 1999). "The decision of a district court should not be reversed merely because the appellate court views the evidence differently." *Id.* "Rather, the findings must be manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *Id.* (quotation omitted). "Findings of fact are clearly erroneous only if the reviewing court is left with the definite and firm conviction that a mistake has been made." *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999) (quotation omitted). "If there is reasonable evidence to support the trial court's findings of fact, a reviewing court should not disturb those findings." *Id.*

Appellant argues that the district court's findings are clearly erroneous because "the objective weight of the evidence showed that he did nothing wrong." Appellant

argues that the district court ignored "positive, uncontradicted, unimpeached testimony" in contravention of the rule stated in *O'Leary v. Wangensteen*, that

> the court or jury cannot disregard the positive testimony of an unimpeached witness unless and until its improbability or inconsistency furnishes a reasonable ground for so doing, and this improbability or inconsistency must appear from the facts and circumstances disclosed by the record in the case. It cannot be arbitrarily disregarded by either court or jury for reasons resting wholly in their own minds and not based upon anything appearing on the trial.
>
> This rule cannot be nullified by the supposition or guess that the appearance of the witness led to his being discredited. To so hold would expose the litigant's property rights to the whim, caprice, or notion of the individual trier of fact, which would result in far greater danger than can possibly come from a rigid enforcement of the established rule that the record must disclose the reason or ground for rejecting the positive testimony of an unimpeached witness.

175 Minn. 368, 370-72, 221 N.W. 430, 431 (1928) (citations omitted).

But "[t]he rule that the court cannot disregard positive testimony of an unimpeached witness is subject to the exception that if on the record as a whole its improbability and inconsistency appears, it may be disregarded." *Fairview Cmty. Hosps. v. Wilson*, 311 Minn. 522, 523, 249 N.W.2d 442, 443 (1976). Thus, "[a] district court, as finder of fact, is not required to believe even uncontradicted testimony if there are reasonable grounds to doubt its credibility." *Gellert v. Eginton*, 770 N.W.2d 190, 196 (Minn. App. 2009), *review denied* (Minn. Oct. 20, 2009).

We now turn to appellant's specific assignments of factual error.

Financial Transfers

Appellant complains that "[t]he district court found that the bank transfers from February 2007 through October 2008 were unlawful." He assigns error to the finding, arguing that "[t]he positive, uncontradicted, unimpeached testimony of [appellant] shows, on the contrary, that the funds transferred were his, and his testimony is objectively corroborated by his father's will, the note attached to his father's will, bank records going back twenty-five years, the results of a rigorous sheriff's investigation, and the indisputable testimony of two nephews who had nothing to gain and everything to lose by stepping forward."

"A joint account belongs, during the lifetime of all parties, to the parties in proportion to the net contributions by each to the sums on deposit, unless there is clear and convincing evidence of a different intent." Minn. Stat. § 524.6-203(a) (2012). "A party's net contribution is the amount of money deposited by or for him, less withdrawals made by or for him." *Russell's AmericInn, LLC v. Eagle Gen. Contractors, LLC*, 772 N.W.2d 81, 86 (Minn. App. 2009). Under section 524.6-203(a), "a joint account holder does not, without evidence of a contrary intent, own funds contributed by another party to the account" and "exercises dominion over those funds only with the consent of the contributing party, who can bring an action to recover wrongfully withdrawn funds." *Enright v. Lehmann*, 735 N.W.2d 326, 335 (Minn. 2007).

Appellant contends that the funds in the First National Bank account were his. He testified that his parents gifted him a significant portion of the funds throughout his life and that he saved some of the funds from his work in construction and other jobs. He

testified that the gifts continued until 2000, that he had accumulated $500,000 in gifts by 1990, and that he has not been employed since early 1997.

The district court found that appellant's contributions to the First National Bank account since 1987 were nominal. The district court also noted appellant's limited employment history and considered the personal expenses he must have had since 1987. The district court also found that appellant failed to establish by "clear and convincing evidence, an intent by [respondent] to gift [him] anything but the Bemidji house, subject to a life estate, and [certain] stock."

The record supports, rather than refutes, the district court's rejection of appellant's testimony that he was gifted the majority of the funds in the joint account. Eugene's will does not address the purported gifts. Although the note attached to the will states: "my wife Muriel and myself have each been giving our son Gregory a yearly finance gift" in "the maximum allowed by law" for "most of Gregory's life," appellant testified that Eugene wrote the note in 2006 because he and appellant were accused of stealing respondent's money and Eugene wanted to clarify that the money was appellant's and not respondent's. Under the circumstances, the district court was free to discredit the note, and there is no other documentation of the alleged gifts.

Moreover, the bank records and the sheriff's investigation do not support appellant's gift claim. Apart from the presence of appellant's name on the account at First National Bank, it is unclear how the bank records show that any of the funds therein were gifts to appellant. And regardless of the county's decision not to pursue criminal charges against appellant, O'Halloran concluded, based on his investigation, that

appellant transferred in excess of $900,000 from an account held in his and his parents' names to bank accounts held solely in his name without respondent's consent. Finally, the testimony of appellant's nephews does not support appellant's assertion. When Kenneth Bellino was asked if he talked to Eugene or respondent about gifts made to members of the family, he testified, "I don't have knowledge of that kind of stuff." And Anthony Bellino's testimony regarding gifts was limited to his statement that the gifts ended in 2000-2001.

Lastly, at trial, appellant was unable to explain when the gifts began, how much he received, when he received the gifts, how much he loaned to respondent, and when he made the loans. In sum, the record provided reasonable grounds for the district court to doubt appellant's credibility, and the district court's findings regarding appellant's transfers of funds from respondent's joint account are not erroneous. *See Gellert*, 770 N.W.2d at 196 (stating that "[a] district court, as finder of fact, is not required to believe even uncontradicted testimony if there are reasonable grounds to doubt its credibility").

Power of Attorney

Appellant assigns error to the district court's finding that respondent did not sign the power of attorney, citing "the positive, unimpeached, and uncontradicted testimony of the notary public affirm[ing] her signature and stamp, as well as her business practice of requiring the presence of the signatory for notarization." In addition, appellant contends that the district court erred by relying on "the self-serving testimony of Annette, who had no foundation and expertise, and whose behavior was at least impeached, if not barred by

her mail theft, and witness tampering through her previous counsel." For the reasons that follow, we are not persuaded.

First, the *O'Leary* rule is inapplicable because the notary public's testimony was contradicted by Annette's testimony that the signature on the power of attorney was not respondent's. Moreover, the notary public's testimony was conflicting. Although she stated that it was her regular practice to have the signatory sign in her presence, she admitted that a coworker occasionally provided her with previously executed documents to notarize. And she told the investigator that she had reason to believe that the power of attorney in this case had been presented to her in that manner.

Second, appellant's argument that the district court erred in relying on Annette's testimony is misplaced because it invites us to make our own credibility determination, which we cannot do. *See Stisser Grantor Trust*, 818 N.W.2d 495, 507 (Minn. 2012) (stating that appellate courts defer to the district court's opportunity to assess the credibility of witnesses when determining whether a finding is clearly erroneous). The weight to be given to any impeachment evidence was a determination for the finder of fact and not this court.

And third, a witness need not qualify as an expert in handwriting forensics to testify regarding the authenticity of a signature. *See* Minn. R. Evid. 901(b)(2) (listing a "[n]onexpert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation" as an example of an appropriate form of authentication). Annette competently testified "based on the familiarity of [her] mother's signature throughout her life."

In sum, the district court determined that Annette's testimony regarding the authenticity of the signature on the power of attorney was credible, and this court will not second-guess that determination. *See In re Stisser Grantor Trust*, 818 N.W.2d at 507.

Respondent's Competency

Lastly, appellant contends that the district court's finding that respondent was not competent to execute the power of attorney is clearly erroneous given Joann's "positive, unimpeached, and uncontradicted testimony . . . that, at the time the document was signed and notarized, [respondent] functioned normally in her home, was not impaired in necessary understanding, was able to vote in a public election, and expressed a desire to execute the power of attorney in question."

"A person is considered competent if he has enough mental capacity to understand, to a reasonable extent, the nature and effect of what he is doing." *Younggren v. Younggren*, 556 N.W.2d 228, 232 (Minn. App. 1996) (quotation omitted). "A written power of attorney that is dated and purports to be signed by the principal named in it is presumed to be valid." Minn. Stat. § 523.04 (2012). A legal presumption, however, "is not evidence, but is rather a rule of law dictating decision on unopposed facts and shifting the burden of going forward with the evidence." *Ogren v. City of Duluth*, 219 Minn. 555, 564, 18 N.W.2d 535, 540 (1945).

Contrary to appellant's assertion, respondent's medical records regarding her cognitive functioning in the summer and fall of 2004 contradicted Joann's testimony. And these records support the district court's finding that respondent did not have the capacity to execute a power of attorney in December 2004. Thus, appellant's reliance on

O'Leary is once again misplaced, and it cannot otherwise be said that the district court's finding is clearly erroneous.

Affirmed.