STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1407

Christian M. Sande, et al.
Respondents,

vs.

HD Vest Investment Securities, Inc.,
a Texas corporation,
Defendant,

SeonaCherie Sande,
Appellant.

Filed August 12, 2008
Affirmed
Wright, Judge

Ramsey County District Court
File No. 62-C4-07-002776

Peggy L. Stevens, 2440 Charles Street, Suite 224, North St. Paul, MN 55109 (for appellant)

Charles N. Nauen, Lockridge, Grindal, Nauen, 100 Washington Avenue South, Suite 2200, Minneapolis, MN 55401; and

Christian M. Sande, 2637 1/2 Humboldt Avenue South, Minneapolis, MN 55408 (for respondents)

Considered and decided by Wright, Presiding Judge; Lansing, Judge; and Minge, Judge.

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

WRIGHT, Judge

In this appeal, appellant challenges the summary judgment enforcing the dissolution judgment from the first marriage of appellant's late husband and awarding her late husband's Individual Retirement Account (IRA) to his sons. Appellant argues that the district court erred because its action violates her statutory right to an elective share of her late husband's estate. We affirm.

FACTS

Gerald Sande (decedent) and Virginia Sande had three sons, respondents Christian Sande, Scott Sande, and Timothy Sande (collectively sons). Decedent and Virginia Sande ended their 34-year marriage in November 1995. The dissolution judgment divided decedent's employer-held 401K equally between decedent and Virginia Sande, awarding each $62,902. This judgment further provided:

> Both parties shall and do hereby agree to be legally bound, that Gerald Andrew Sande shall name as beneficiary of the above noted IRA accounts and 401K Plans Virginia Jane Sande and, Virginia Jane Sande shall name as beneficiary of the above noted IRA accounts and 401K Plans Gerald Andrew Sande. In the event that either party does not survive to receive the IRAs or 401Ks, both parties agree that they will name their children as beneficiaries in equal shares.

When decedent retired in 2001, he received a $188,073 payout from his employer, which he rolled into the IRA that is the subject of this case.

Decedent married appellant SeonaCherie Sande (wife) in July 2003. Virginia Sande died in February 2004. In accordance with the dissolution judgment, Virginia

Sande had designated decedent as the beneficiary on her retirement account, and the retirement account was transferred to decedent.

Decedent later designated wife as a beneficiary of 40 percent of his IRA, and he designated his sons and his grandchildren as beneficiaries of the remaining 60 percent. Decedent died on October 31, 2006. The IRA was worth more than $200,000 on the date of his death.

Wife and sons claimed the IRA. Wife sought 40 percent of the IRA based on decedent's beneficiary designation. Based on the 1995 dissolution judgment, sons sought equal one-third shares of the entire IRA. HD Vest Investment Securities, Inc. (HD Vest), which held decedent's IRA, refused to transfer the IRA to any of the parties.

Sons initiated a declaratory-judgment action on February 7, 2007, seeking enforcement of the 1995 dissolution judgment and a declaration of their legal ownership of the IRA.[1] While the declaratory-judgment action was pending before the district court, wife petitioned for an elective share of decedent's augmented estate. The district court reserved wife's elective-share petition "for later determination pending the final resolution of [the declaratory-judgment action], and all appeals thereof." Sons subsequently moved for judgment on the pleadings in the declaratory-judgment action, which the district court granted in its order dated May 22, 2007. Concluding that the 1995 dissolution judgment is enforceable with respect to the funds held in the IRA, the

[1] Although HD Vest was initially named as a co-defendant, the parties agreed to dismiss sons' claims against HD Vest without prejudice.

district court ordered release of the funds to sons in equal one-third shares according to the terms of the 1995 dissolution judgment. This appeal followed.

D E C I S I O N

Although sons moved for judgment on the pleadings, and the district court's order purports to grant that motion, the parties' submission of affidavits converted sons' motion into one for summary judgment. Minn. R. Civ. P. 12.03. Accordingly, we apply the standard of review for summary judgment. *McLaughlin v. Heikkila*, 697 N.W.2d 231, 233 (Minn. App. 2005), *review denied* (Minn. Aug. 24, 2005).

On review of a district court's grant of summary judgment, we consider whether there are any genuine issues of material fact and whether the district court erred in its application of the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). In doing so, we view the evidence in the light most favorable to the party against whom summary judgment was granted. *Isles Wellness, Inc. v. Progressive N. Ins. Co.*, 703 N.W.2d 513, 516 (Minn. 2005).

Summary judgment shall be granted if the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03. To counter a summary-judgment motion successfully, a party must supply more than mere averments set forth in the pleadings. Minn. R. Civ. P. 56.05. A genuine issue of material fact cannot be established based on evidence that merely creates a metaphysical doubt as to a factual issue and based on evidence that is not sufficiently probative so as to permit reasonable people to

draw different conclusions regarding an essential element of a party's case. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997).

The facts underlying sons' claim are not in dispute. Nor is there any dispute that the 1995 dissolution judgment unambiguously required decedent and Virginia Sande to name each other as beneficiary, or, in the event of the death of decedent or Virginia Sande, to name sons as coequal beneficiaries of the relevant IRA or 401K plan. But wife argues that the district court erred by (1) concluding that the 1995 dissolution judgment is enforceable with respect to the funds in the IRA, and (2) failing to substantively address her affirmative defenses. We address each argument in turn.

I.

A stipulated dissolution judgment is a binding contract. *Shirk v. Shirk*, 561 N.W.2d 519, 521 (Minn. 1997). The enforceability of a contract presents a question of law, which we review de novo. *Share Health Plan, Inc. v. Marcotte*, 495 N.W.2d 1, 3 (Minn. App. 1993), *review denied* (Minn. Mar. 30, 1993).

A beneficiary designation in a retirement account, such as an IRA, is equivalent to a beneficiary designation in a life-insurance policy with respect to the enforceability of a dissolution judgment impacting such a designation. *See Larsen v. Nw. Nat'l Life Ins. Co.*, 463 N.W.2d 777, 780-81 (Minn. App. 1990) (addressing enforceability of dissolution judgment as against beneficiary designation on life-insurance policy), *review denied* (Minn. Feb. 6, 1991); *In re Estate of Rock*, 612 N.W.2d 891, 894-95 (Minn. App. 2000) (relying on *Larsen* in evaluating impact of dissolution judgment on beneficiary designation in IRA). Under Minnesota law, when a dissolution judgment incorporates an

agreement to name a particular person as beneficiary of a life-insurance policy, the dissolution judgment creates a vested equitable interest in that person, which is superior to that of a named beneficiary who has given no consideration. *Head v. Metro. Life Ins. Co.*, 449 N.W.2d 449, 455 (Minn. App. 1989), *review denied* (Minn. Feb. 21, 1990). And if a beneficiary designation conflicts with the terms of the dissolution judgment, the dissolution judgment should be enforced to effectuate the intent of the parties to the dissolution judgment. *See Larsen*, 463 N.W.2d at 780-81 (enforcing dissolution judgment, rather than beneficiary designation on life-insurance policy, based on principle that "equity regards that as done which ought to have been done" (quotation omitted)). Applying these principles, we conclude that the district court correctly determined that sons have an enforceable interest in decedent's IRA under the terms of the 1995 dissolution judgment.

Wife acknowledges the holdings of *Head* and *Larsen*. But she argues that the 1995 dissolution judgment should not be enforced because the dissolution judgment violates Minn. Stat. § 524.2-202 (2006) by "effectively extinguish[ing]" her elective-share right. Wife's claim constitutes an impermissible collateral attack on an enforceable final judgment. *See Boom v. Boom*, 367 N.W.2d 536, 538 (Minn. App. 1985) (stating that property division in dissolution judgment is final when time period for appeal has expired), *review denied* (Minn. June 27, 1985); *see also Taylor v. Taylor*, 413 N.W.2d 587, 589 (Minn. App. 1987) (stating that "even an excessive decree" cannot be collaterally attacked in subsequent proceeding).

We observe that wife's argument that the dissolution judgment violated section 524.2-202 was neither presented to nor addressed by the district court. This argument, therefore, is not properly before us. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (limiting appellate review to issues presented to and considered by district court). The district court addressed only the enforceability of the 1995 dissolution judgment. In light of the narrow issue presented, the district court was not required to decide the separate question of whether probate law requires inclusion of any part of the IRA in decedent's augmented estate under Minn. Stat. § 524.2-203 (2006), notwithstanding the enforceability of the 1995 dissolution judgment. *See* Minn. Stat. § 555.01 (2006) (permitting district court to "declare rights, status, and other legal relations whether or not further relief is or could be claimed").

We also observe that several factual questions that may be relevant to the augmented-estate decision were never raised or presented to the district court for its consideration. These include how and why the 401K plan changed in character and amount between November 1995, when the dissolution judgment was entered, and October 2006, when decedent died. Because wife's argument regarding the impact of her elective-share rights on the distribution of the funds within the IRA must be resolved by operation of probate law, wife may present that argument to the district court for consideration with her reserved elective-share petition.

II.

Wife also argues that the district court erred by failing to substantively address her affirmative defenses. Wife argued several affirmative defenses before the district court,

but she failed to identify any legal authority supporting her arguments. Failure to identify legal authority for an argument constitutes waiver of that argument. *See Grigsby v. Grigsby*, 648 N.W.2d 716, 726 (Minn. App. 2002) (concluding that argument was waived in part because of failure to provide district court with supporting legal authority), *review denied* (Minn. Oct. 15, 2002). The district court, therefore, did not err by declining to address the merits of wife's affirmative defenses. And because wife fails to identify any supporting legal authority on appeal, we decline to address wife's affirmative defenses. *See State by Humphrey v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997) (stating that assignment of error in brief based on mere assertion and unsupported by argument or authority is waived unless prejudicial error is obvious on mere inspection).

Affirmed.