

DA 17-0618

IN THE SUPREME COURT OF THE STATE OF MONTANA

2018 MT 171N

---

IN THE MATTER OF THE ESTATE OF:

ADA ELLIOT,

Deceased.

---

APPEAL FROM: District Court of the Thirteenth Judicial District,  
In and For the County of Yellowstone, Cause No. DP 17-36  
Honorable Ingrid G. Gustafson, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Ian Elliot, self-represented, Billings, Montana

For Appellee:

James C. Reuss, Guthals, Hunnes & Reuss, P.C., Billings, Montana

---

Submitted on Briefs: April 18, 2018

Decided: July 10, 2018

Filed:



---

Clerk

Justice Dirk Sandefur delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, we decide this case by memorandum opinion, which shall not be cited and does not serve as precedent. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review. The case title, cause number, and disposition shall be included in this Court's quarterly list of non-citable cases published in the Pacific Reporter and Montana Reports.

¶2 Ada E. Elliot (Ada) died on January 28, 2017, at the age of 91. Ada's will designated her daughter Cynthia Elliot (Cynthia) and her son Ian Elliot (Ian) as co-personal representatives and bequeathed the estate equally between the two siblings. Ian filed a petition for probate and appointment as personal representative in the Montana Thirteenth Judicial District Court, Yellowstone County, on February 13, 2017. Cynthia objected to Ian's appointment and filed a motion for the appointment of a special administrator for the Elliot Estate. Following a June 12, 2017 hearing on the matter, the District Court denied Ian's application for appointment as personal representative and granted Cynthia's petition. Ian, appearing *pro se* on appeal, challenges the appointment of a special administrator.

¶3 The district court's findings of fact related to the appointment of an executor must be based on substantial evidence. *In re Estate of Graf*, 150 Mont. 577, 580, 437 P.2d 371, 372 (1968). We review a district court's appointment of a personal representative to determine whether the court correctly interpreted the law. *In re Estate of Edwards*, 2017 MT 93, ¶ 15, 387 Mont. 274, 393 P.3d 639 (citing *In re Estate of McMurchie*, 2004 MT

98, ¶ 7, 321 Mont. 21, 89 P.3d 18). A district court may appoint a special administrator “on the petition of any interested person and finding, after notice and hearing, that appointment is necessary to preserve the estate or to secure its proper administration, including its administration in circumstances where a general personal representative cannot or should not act.” Section 72-3-701(2), MCA.

¶4 The Elliot Estate consists primarily of the deceased’s majority interest in StarFire, LP (StarFire), a limited partnership organized for the purpose of holding valuable Gallatin Valley real estate. Cynthia and Ian held minority interests in StarFire. By her will, Ada bequeathed her ownership interest in StarFire to Cynthia and Ian in equal shares.

¶5 The siblings’ relationship deteriorated during their mother’s final years when disputes arose regarding the mother’s care and management of StarFire. In 2010, Ian removed his mother from the facility where she had been placed by Cynthia, and brought Ada to his home where she lived until her death. In October 2014, Cynthia initiated legal action on behalf of StarFire in the Montana Eighteenth Judicial District Court, Gallatin County, seeking the removal of Ian as a general partner.<sup>1</sup> One year later, in October 2015, Ian, in his capacity as a general partner of StarFire and guardian of Ada Elliot, sued Cynthia in U.S. District Court for damages primarily related to Cynthia’s alleged mismanagement of StarFire.<sup>2</sup> The legal actions initiated by the siblings against one another remained pending at the time of proceedings related to the administration of the Elliot Estate.

---

<sup>1</sup> *StarFire, L.P. v. Ian Elliot*, Cause No. DV-14-829A.

<sup>2</sup> *Ian R. Elliot and Ada Elliot v. Cynthia M. Elliot and Elliot & Assoc.*, Civil No. CV-15-107-JTJ.

¶6 The District Court's June 13, 2017 order noted:

Ian asserts . . . the sole conflict is between [him] and Cynthia, not [him] and Ada's estate. Cynthia asserts a special administrator should be appointed as she does not believe she and Ian are able to work together as too much distrust has developed.

Although the primary conflict is between Ian and Cindy, the Court is concerned Ian will let this conflict impair his decision making with regard to the estate such that he would not act on behalf of the estate.

The District Court determined that ongoing litigation and other conflicts between the siblings raised sufficient concerns regarding Ian's ability to put aside his personal motivations and act on behalf of the Estate to warrant denial of Ian's petition for appointment. In ordering the appointment of a special administrator for the Elliot Estate, the court specifically limited the administrator's authority to preclude the Estate from paying or settling any creditor claims with a direct nexus to StarFire, initiating new litigation, or withdrawing the Estate from pending litigation initiated by either sibling in federal and State court.

¶7 Ian argues that the District Court erred because any conflict of interest he might have brought to his work as personal representative of the Elliot Estate due to his status as a co-beneficiary and litigant against his sister would have been cured by court-ordered supervision of his administration of the Estate, as recognized by this Court *In re Estate of Zempel*, 2000 MT 283, ¶ 21, 302 Mont. 183, 14 P.3d 441.

¶8 When two or more persons share a priority for appointment as personal representative, but are unable to concur in nominating another to act for them or in applying

for appointment, the district court may appoint any qualified person. Section 72-3-504(3), MCA. The Uniform Probate Code permits the district court to appoint a special administrator, after notice and hearing, “in circumstances where a general personal representative cannot or should not act.” Section 72-3-701(2), MCA.

¶9 Ian may have been correct to declare his conflicts of interest curable by court supervision of his administration of the Elliot Estate. However, the District Court had no legal obligation to appoint him as personal representative. The co-personal representatives named by the decedent’s will in this case were also the will’s primary beneficiaries and engaged in contentious litigation against one another that implicated the primary asset of the Estate. We conclude that the District Court acted within its statutory authority when the court appointed a special administrator and tailored that appointment to address the specific circumstances presented by the ongoing litigation between the siblings.

¶10 Upon the issuance of the District Court’s June 13, 2017 order of appointment, Ian filed a “motion to alter and amend and for reconsideration.” Ian did not assert the court committed manifest error of law or fact or that the order resulted in manifest injustice. Neither did Ian raise newly-discovered evidence for court consideration nor cite an intervening change in controlling law to justify an alteration or amendment of the judgment. Instead, Ian essentially asked the court to re-evaluate the evidence and reach a different conclusion, which is a request the court was under no obligation to honor. We affirm the District Court’s declination of Ian’s motion, thereby allowing this M. R. Civ. P. 59(e) motion to be denied after 60 days by action of M. R. Civ. P. 59(f).

¶11 We decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. This appeal presents no constitutional issues, no issues of first impression, and does not establish new precedent or modify existing precedent. We conclude that substantial evidence supports the District Court's order denying Ian's application for appointment as personal representative and granting Cynthia's petition for the appointment of a special administrator for the Estate of Ada E. Elliot.

¶12 We affirm.

/S/ DIRK M. SANDEFUR

We concur:

/S/ MIKE McGRATH  
/S/ LAURIE McKINNON  
/S/ BETH BAKER  
/S/ JIM RICE