DA 22-0744

IN THE SUPREME COURT OF THE STATE OF MONTANA

2023 MT 218

IN THE MATTER OF THE ESTATE OF:

VICTOR STARKEL,

Deceased.

APPEAL FROM: District Court of the Twentieth Judicial District,
In and For the County of Lake, Cause No. DP-2011-34
Honorable Shane A. Vannatta, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

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Submitted on Briefs: July 12, 2023

Decided: November 21, 2023

Filed:

Clerk

Justice James Jeremiah Shea delivered the Opinion of the Court.

¶1 Ryan Adamson ("Adamson") and Christine Holtzen ("Holtzen") appeal the September 21, 2022, Order denying Adamson's motion for relief and the December 7, 2022 Order granting Appellee Sylvia Moody's Petition for Subsequent Administration of the Estate of Victor Starkel ("Estate") by the Twentieth Judicial District Court, Lake County. We address the following dispositive issue:

Whether the District Court erred by reopening the Estate pursuant to § 72-3-1016, MCA.

¶2 We affirm.

PROCEDURAL AND FACTUAL BACKGROUND

¶3 On January 21, 2007, Victor Starkel ("Starkel") and his grandson, Adamson, entered into a written Stock Pledge Agreement ("SPA"). The SPA provided that in exchange for $10,000, Adamson would pledge 40,000 common shares of Cradlepoint, a company Adamson had co-founded.

¶4 Starkel died on June 17, 2011. On June 30, 2011, Starkel's daughter Sylvia Moody ("Moody"), filed for an informal testate probate. Acting as personal representative, Moody discovered a copy of the SPA. Moody called Adamson to inquire about the SPA. Adamson neither answered nor returned Moody's call. Moody then contacted Cradlepoint to inquire about the SPA. Cradlepoint informed Moody that Starkel was not identified as a shareholder on the company's ledger. On January 3, 2013, Moody filed a Final Account of the Estate which did not list the SPA because Moody believed it had no value. On

February 21, 2013, the District Court issued a Decree of Distribution which approved the Final Account and closed the Estate.

¶5 In November 2020, Cradlepoint was acquired by Ericsson for approximately $1.1 billion. In 2021, Moody learned of the acquisition and texted Adamson to ask him about the status of Starkel's investment. Adamson replied by telling Moody that she had misunderstood the agreement and that he did not owe the Estate anything because the SPA had no value at the time of Starkel's death. Moody then learned that Adamson had entered into similar agreements with other family members and after the Cradlepoint sale, he honored these agreements.

¶6 On January 14, 2022, Moody initiated a lawsuit against Adamson in state court which included claims for conversion, security fraud, violation of the Montana Consumer Protection Act, deceit, and unjust enrichment. Adamson, a citizen of Nevada, removed the lawsuit to federal court where it is currently pending. Adamson challenged Moody's standing on the basis that the Estate was closed, and Moody was no longer the personal representative.

¶7 Moody petitioned to re-open the Estate and be re-appointed as the personal representative on April 26, 2022. Adamson, arguing that he is an "interested person" under the probate code, objected to reopening of the Estate. The District Court entered its Findings of Fact, Conclusions of Law, and on December 20, 2022, following the District

Court's decision to Grant Moody's petition to re-open the Estate, Holtzen, Adamson's mother, filed her objection to reopening the Estate.[1]

STANDARDS OF REVIEW

¶8 This Court reviews a district court's conclusions of law de novo for correctness. *Folsom v. Mont. Pub. Emps. Ass'n*, 2017 MT 204, ¶ 18, 388 Mont. 307, 400 P.3d 706. A district court's interpretation and application of statutes presents a question of law. *See Kulstad v. Maniaci*, 2009 MT 326, ¶ 50, 352 Mont. 513, 220 P.3d 595. We review a district court's findings of fact to determine whether they are clearly erroneous. *Brimstone Mining, Inc. v. Glaus*, 2003 MT 236, ¶ 20, 317 Mont. 236, 77 P.3d 175. A finding of fact may be clearly erroneous if it is "not supported by substantial evidence; if the district court misapprehended the evidence; or when our review of the record leaves the court with the definite and firm conviction that a mistake has been committed." *Brimstone*, ¶ 20 (citation omitted).

¶9 When, in the subsequent administration of an Estate, there are issues of judicial discretion based upon the principles of equity, "[w]e have held that equitable issues are a matter of discretion resting with the District Court and will be sustained unless an abuse of discretion is shown." *Ruegsegger v. Welborn*, 237 Mont. 317, 321, 773 P.2d 305, 308 (1989); § 72-1-104, MCA, ("Unless displaced by the particular provisions of this code, the principles of law and equity supplement its provisions").

[1] Since we conclude on the merits that the District Court did not err by reopening the estate, we need not address Appellants' arguments regarding their respective standing to object.

DISCUSSION

Whether the District Court erred by reopening the Estate pursuant to § 72-3-1016, MCA.

¶10 Montana has adopted the Uniform Probate Code ("UPC"). The UPC provides that the "code shall be liberally construed and applied to promote its underlying purposes and policies." Section 72-1-101(2)(a), MCA. One such underlying purpose is to "promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to the decedent's successors." Section 72-1-101(b)(iii), MCA.

¶11 Section 72-3-1016, MCA, allows for the administration of a subsequently discovered estate:

> If other property of the estate is discovered after an estate has been settled and the personal representative discharged or after 1 year after a closing statement has been filed, the court upon petition of any interested person and upon notice as it directs may appoint the same or a successor personal representative to administer the subsequently discovered estate.

¶12 As the District Court correctly noted, the question of whether the SPA creates a debt Adamson owes to the Estate is an issue in the federal court action. The sole issue before us is whether or not the District Court's holding that the estate may be reopened pursuant to § 72-3-1016, MCA, on the basis that the SPA, which Moody as personal representative thought to be worthless after inquiring of Adamson and Cradlepoint, constitutes a "subsequently discovered" asset.

¶13 Adamson and Holtzen argue the District Court erred in determining that the SPA was a "subsequently discovered" asset of the Estate because Moody was already aware of the SPA's existence when she filed her final accounting and excluded the SPA. In support

of this argument, Adamson and Holtzen rely on *In re Estate of Swandal*, 179 Mont. 429, 587 P.2d 369 (1978). In *Swandal*, we considered whether a district court had jurisdiction to reopen an estate to amend a scrivener's error in the decree of settlement of final account and distribution of an estate. *Swandal,* 179 Mont. at 433-34, 587 P.2d at 370. The scrivener's error had resulted in the improper inclusion of mineral rights which the executor had previously conveyed. *Swandal,* 179 Mont. at 433-34, 587 P.2d at 369. We held the District Court could correct the error under the power to issue a *nunc pro tunc* order but lacked the authority to reopen the estate because the mineral rights were not "subsequently discovered" as required in § 91A-3-1009, RCM (1947).[2] *Swandal*, 179 Mont. at 433, 437, 587 P.2d at 370, 372.

¶14 Adamson and Holtzen's reliance on *Swandal* is misplaced. Unlike *Swandal*, Moody seeks to reopen the probate for subsequent administration, not to simply correct a scrivener's error in the 2013 decree. More to the point, in *Swandal* it was undisputed that the personal representative knew of the sale of the mining claim, *and* its value. In this case, while it is true that Moody was aware of the SPA's existence prior to the final accounting, she was unaware, even after investigation, that the SPA created a debt to the Estate of any value. This was not for lack of effort on Moody's part. Notably, Moody's investigation included an effort to gain information from Adamson himself regarding the nature, circumstances, and value of the SPA—an effort that was met with Adamson refusing to take or return Moody's call. When Adamson refused to respond, Moody then contacted

[2] Section 91A-3-1009, RCM (1947) is the predecessor to § 72-3-1016, MCA.

Cradlepoint, who advised her that it had no record of a stock pledge to Starkel. Based on Adamson's refusal to respond to her inquiry, and Cradlepoint's affirmative representation that there were no stocks secured by the SPA, Moody reasonably concluded that the SPA was worthless. So, while Moody was aware of the SPA's existence at the time of the final declaration, the nature and value was not evident until after the 2020 sale of Cradlepoint, at which time Moody's investigation into the SPA began to yield more information.

¶15 One of the primary responsibilities of a personal representative is to ascertain and distribute "the distributable assets of a decedent's estate." Section 72-3-902, MCA. By definition, an "asset" must have value. In pertinent part, Black's Law Dictionary defines "asset" as "[a]n item that is owned and *has value*." *Asset, Black's Law Dictionary* (11th ed. 2019) (emphasis added). In her capacity as personal representative, Moody sought to ascertain whether the SPA had any value that would require its inclusion in the distribution of the Estate. Adamson argues that Moody was not diligent in her investigation into the SPA. But there is no dispute that Moody did not simply assume the SPA had no value. Moody exhausted the only two available sources of information as to the nature and value, if any, of the SPA. Moody first inquired of Adamson, who did not respond to her inquiry. After Adamson declined to respond, Moody did not just let the matter drop; she inquired directly of Cradlepoint, who advised her that it had no record of any stock owned or pledged to Starkel. Only after exhausting these avenues of inquiry did Moody reasonably determine the SPA had no value and should not be included in the Estate as a distributable asset, prior to settling the Estate. To the extent that any culpability may be ascribed to

Moody's determination that the SPA had no value, it is to Adamson's failure to respond, rather than Moody's failure to inquire.

CONCLUSION

¶16 The District Court did not abuse its discretion by reopening the Estate pursuant to § 72-3-1016, MCA, on the basis that the SPA constituted a subsequently discovered asset. We affirm.

/S/ JAMES JEREMIAH SHEA

We Concur:

/S/ MIKE McGRATH
/S/ LAURIE McKINNON
/S/ INGRID GUSTAFSON
/S/ JIM RICE