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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0663**

In re: Estate of James R. Franta, Decedent.

**Filed February 11, 2013
Affirmed
Kalitowski, Judge**

Benton County District Court
File No. 05-PR-11-1700

John G. Westrick, Christopher J. Zipko, Westrick & McDowall-Nix, P.L.L.P., St. Paul, Minnesota (for appellant Roberta L. Peery)

Chad M. Roggeman, Roggeman Law Office, P.A., St. Cloud, Minnesota (for respondent Christopher Shorba)

Considered and decided by Stoneburner, Presiding Judge; Kalitowski, Judge; and Larkin, Judge.

UNPUBLISHED OPINION

KALITOWSKI, Judge

Appellant Roberta Peery challenges the district court's determination that she was unsuitable to serve as the personal representative of decedent James R. Franta's estate. We affirm.

DECISION

“The district court has discretion to determine suitability of a personal representative, and that determination will not be reversed absent an abuse of discretion.”

In re Estate of Martignacco, 689 N.W.2d 262, 269 (Minn. App. 2004), *review denied* (Minn. Jan. 26, 2005). A district court’s findings of fact are not set aside unless clearly erroneous. Minn. R. Civ. P. 52.01; *In re Estate of Boysen*, 309 N.W.2d 45, 47 (Minn. 1981) (applying rule 52.01 in a probate dispute). We defer to the district court’s credibility determinations. *Gellert v. Eginton*, 770 N.W.2d 190, 194-95 (Minn. App. 2009) (citing *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988)), *review denied* (Minn. Oct. 20, 2009).

The Uniform Probate Code (UPC) governs appointments of personal representatives. Minn. Stat. § 524.3-203 (2012). Potential representatives are accorded priority for appointment in the following order:

- (1) the person with priority as determined by a probated will including a person nominated by a power conferred in a will;
- (2) the surviving spouse of the decedent who is a devisee of the decedent;
- (3) other devisees of the decedent;
- (4) the surviving spouse of the decedent;
- (5) other heirs of the decedent;
- (6) . . . any creditor;
- (7) . . . any conservator of the decedent who has not been discharged.

Id., subd. (a)(1)-(7). But “[n]o person is qualified to serve as personal representative who is . . . a person whom the court finds unsuitable in formal proceedings.” *Id.*, subd. (f)(2); *see also Crosby v. Hunt (In re Estate of Crosby)*, 218 Minn. 149, 155, 15 N.W.2d 501, 505 (1944) (“Unsuitability is now a ground for refusing appointment, whereas formerly it was only a ground for removal of an executor.”).

“Suitable” is not defined by the UPC and “has no fixed and inflexible meaning.” *Crosby*, 218 Minn. at 157, 15 N.W.2d at 506. Suitability is determined by analyzing a person’s “temperament, experience[,] and sagacity to discharge the trust with fidelity, prudence[,] and promptness[,] . . . having regard to the special conditions of each estate and those interested in it as creditors, legatees, and next of kin.” *Id.* (quotations omitted). Preference must be given to the person whom the testator names, and “appointment cannot hinge upon comparisons.” *Id.* at 156, 15 N.W.2d at 506. If the named personal representative is “willing, suitable, and competent,” he or she shall be appointed “notwithstanding [that] the heirs at law offer the name of another whom the appointing court might consider more suitable or competent.” *Id.*

Here, the decedent named Peery as personal representative of decedent’s estate in a signed codicil. But following a hearing, the district court found Peery unsuitable to serve as personal representative and instead appointed respondent Christopher Shorba. In arguing that the district court abused its discretion by finding her unsuitable, Peery points to the following findings of fact:

Peery does not have experience as a fiduciary. She commenced this proceeding of her father’s will after he was deceased for more than six months. In the meantime, expenses of the estate went unpaid. . . . Allegations by [Peery] that the original signed codicil was possessed or destroyed by [Shorba] were false. It is difficult for this court to see how she has the temperament and prudence required to administer this estate. [Peery] is unsuitable to serve as personal representative.

Peery does not dispute these findings; rather, she argues that these “factual determinations do not support a conclusion of unsuitability.” We disagree.

Because two of the district court's factual findings support a determination that Peery is unsuitable, the district court did not abuse its discretion. First, lack of experience may be a factor in determining suitability. *Crosby*, 218 Minn. at 157, 15 N.W.2d at 506. Therefore, the district court's finding that Peery lacked experience supports its determination that she was unsuitable. Second, the district court found that Peery lacked the "temperament and prudence" to administer the estate. Temperament and prudence are also factors in determining suitability. *Id.*; *see also* William C. Burton, *Legal Thesaurus* 460 (Steven C. DeCosta et al. eds., 2nd ed. 1992) (listing "prudence" as a synonym for "sagacity"). Therefore, the district court's finding that Peery lacked the appropriate personality characteristics to administer the estate also supports its determination that Peery was unsuitable. Moreover, factual findings regarding a witness's disposition or personality are credibility determinations to which we defer. *See, e.g., Albertson v. Albertson*, 243 Minn. 212, 215, 67 N.W.2d 463, 466 (1954) (stating that demeanor, disposition, and character are factors bearing on a witness's credibility); *Gellert*, 770 N.W.2d at 194-95.

Peery additionally argues that the district court improperly determined Peery's suitability in comparison to Shorba's suitability. Peery is correct that determinations of unsuitability cannot be made based on comparisons. *See Crosby*, 218 Minn. at 156, 15 N.W.2d at 506 ("[A]ppointment cannot hinge upon comparisons."). But we are not persuaded that the district court improperly compared Peery and Shorba. In its order, the district court merely explained the reasons why it concluded that Peery was unsuitable and why it concluded that Shorba was suitable.

In conclusion, it would have been preferable to have more detailed findings with regard to Peery's unsuitability. But we must defer to the district court's broad discretion. *See Jacques v. Marsden (In re Estate of Barck)*, 215 Minn. 625, 628, 11 N.W.2d 149, 151 (1943) (stating that a determination of unsuitability will not be disturbed if it rests upon adequate evidence). On this record, we cannot say the district court abused its discretion.

Affirmed.