STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0257

In re the Estate of John L. Novotny, Deceased.

Filed April 15, 2008
Affirmed
Wright, Judge

Scott County District Court
File No. 70-PR-06-3029

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Considered and decided by Willis, Presiding Judge; Wright, Judge; and Poritsky, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals 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

WRIGHT, Judge

Appellants challenge the district court's denial of their objection to the distribution of a bequest in their father's will to his former companion. Appellants argue that (1) the language of the bequest is ambiguous; (2) the district court's construction of the language is erroneous; and (3) the district court abused its discretion by concluding that the former companion's receipt of the will's bequest does not constitute unjust enrichment. We affirm.

FACTS

Appellants Carrie Novotny and John B. Novotny (collectively, the Novotnys) are the daughter and son of John L. Novotny, who died on October 15, 2005. At the time of his death, Novotny had a will, executed in December 1995, that provided for the distribution of most of his assets to a trust in favor of the Novotnys. The will also contained the following bequest:

> If my companion, Diane M. Ruhland shall survive me, I give to her the lesser of (a) $100,000 or (b) an amount representing one-third of the net value of my estate at the time of my death (including any life insurance payable to my estate as a result of my death). If she shall not survive me, this gift shall lapse.

Novotny and respondent Diane M. Palmstein, f/k/a/ Diane M. Ruhland, had a romantic relationship from 1993 until August 1999 and, during that period, lived together in Palmstein's home. Although Novotny and Palmstein ended their relationship, Novotny never revoked or modified the December 1995 will.

After her father's death, Carrie Novotny contacted Palmstein and asked her to sign a disclaimer releasing any claim Palmstein might have under Novotny's will. Expressing her surprise that Novotny had not removed her from his will, Palmstein orally agreed to do so. Palmstein later changed her mind and refused to sign a disclaimer.

The Novotnys objected to the formal probate of the will. Specifically, they objected to distribution of the bequest to Palmstein, arguing that (1) the term "companion" was ambiguous; (2) their father had intended the term "companion" as a conditional term and had not intended Palmstein, his former companion, to take under the will; and (3) it would unjustly enrich Palmstein to permit her to take under the will. The district court admitted the will to formal probate in February 2006 but scheduled an evidentiary hearing to address the Novotnys' objection.

After the hearing, the district court denied the Novotnys' objection to Palmstein's receipt under the will. It found that the term "companion" is descriptive rather than conditional. The district court also determined that "no factual circumstances exist that would make Palmstein's receipt of a bequest under [Novotny's] will an unjust benefit to her"; therefore, the doctrine of unjust enrichment does not preclude Palmstein's receipt under the will. The Novotnys subsequently moved the district court for amended findings or a new trial. Granting the motion in part, the district court clarified several of its findings of fact and conclusions of law. In doing so, the district court clarified that the term "companion" is unambiguous and was intended by Novotny to be descriptive rather than conditional. And although the district court did not alter its finding regarding unjust enrichment, it clarified that, "because [it found] that Decedent intended for Palmstein to

receive a devise under his Last Will and Testament, Palmstein's receipt of such a devise does not constitute unjust enrichment." This appeal followed.

D E C I S I O N

I.

When construing a will, a court must "ascertain the actual intention of the testator as it appears from a full and complete consideration of the entire will when read in light of the surrounding circumstances at the time of the execution." *In re Estate of Zagar*, 491 N.W.2d 915, 916 (Minn. App. 1992) (quoting *In re Hartman's Trust*, 347 N.W.2d 480, 482-83 (Minn. 1984)). When the terms of a will are unambiguous, extrinsic evidence is not admissible for the purpose of construction. *In re Estate of Arend*, 373 N.W.2d 338, 342 (Minn. App. 1985).

The Novotnys first argue that the term "companion" in the bequest to "my companion, Diane M. Ruhland" is ambiguous and that their father intended the term to be conditional. We review de novo the district court's construction of the provisions of a will. *In re Estate & Trust of Anderson*, 654 N.W.2d 682, 687 (Minn. App. 2002), *review denied* (Minn. Feb. 26, 2003). Whether the terms of a will are ambiguous presents a question of law, which we review de novo. *Zagar*, 491 N.W.2d at 916.

A will is ambiguous if its terms are reasonably susceptible of two or more interpretations. *Arend*, 373 N.W.2d at 342. For example, ambiguity may arise when a will names a person as the object of a gift and there are multiple people who answer to that name. *Id.* Ambiguity also may be found when a will contains a "misdescription of

the object or subject," such as when a person or item described in the will does not exist. *Id.*

Misdescription of the object of a bequest will not constitute ambiguity if the person so described also is specifically named. *In re Estate of Kerr*, 520 N.W.2d 512, 514 (Minn. App. 1994), *review denied* (Minn. Oct. 14, 1994). In *Kerr*, the testator's son argued that his father's bequest to "my stepdaughter, Dawn M. Valentine," was ambiguous because his father was divorced from Dawn Valentine's mother at the time of his death. *Id.* We held that, "[i]n the absence of a contrary intent, the word 'stepdaughter,' when used in conjunction with an individual's name, is a descriptive term which may not be distorted into a condition limiting the bequest." *Id.* Absent evidence that a mistake was made in drafting the will, we concluded that the language of the will was not ambiguous. *Id.*

Although Novotny's will does not define the term "companion" and uses the term only once, according to its plain meaning, Palmstein and Novotny were companions when Novotny executed his will. Thus, the term "companion" accurately describes Palmstein's relation to Novotny. *See Zagar*, 491 N.W.2d at 916 (requiring consideration of surrounding circumstances). Because Palmstein was specifically named in the will, the change in her relationship to Novotny does not render the term "companion" ambiguous absent evidence that a mistake was made in drafting the will. *Kerr*, 520 N.W.2d at 514. The Novotnys concede that the will was properly drafted. Consequently,

we agree with the district court's conclusion that the term "companion" is not ambiguous.[1]

Furthermore, when paired with a name, as it is here, the term "companion" is merely "a descriptive term [that] may not be distorted into a condition limiting the bequest." *Id.*; *cf. Dezell v. Pike (In re Will of Dezell)*, 292 Minn. 179, 181, 194 N.W.2d 190, 192 (1972) (stating that it is beneficiary's status "at the time the will is executed and not that which obtains when the beneficiary's interest vests which ordinarily governs"). This construction is consistent with the language of the will as a whole in that the bequest to Palmstein is separately and expressly conditioned on Palmstein surviving Novotny. *See Zagar*, 491 N.W.2d at 916 (requiring consideration of entire will). Thus, the term "companion" is descriptive rather than conditional, and the district court properly denied the Novotnys' objection to Palmstein's receipt under the will.

[1] In denying the objection, the district court characterized the Novotnys as "contestants of the will" and concluded that they had failed to meet their burden under Minn. Stat. § 524.3-407 (2006). Under the statute, "[c]ontestants of a will have the burden of establishing lack of testamentary intent or capacity, undue influence, fraud, duress, mistake, or revocation." *Id.* But section 524.3-407 is limited to contests to the validity of the will. *See, e.g.*, *In re Estate of Torgersen*, 711 N.W.2d 545, 550-54 (Minn. App. 2006) (applying section 524.3-407 to contest based on lack of testamentary capacity and undue influence), *review denied* (Minn. June 20, 2006); *see also Black's Law Dictionary* 1593 (7th ed. 1999) (defining "will contest" as "[t]he litigation of a will's validity, usu[ally] based on allegations that the testator lacked capacity or was under undue influence"). As such, section 524.3-407 does not govern the Novotnys' challenge, and the district court improperly held the Novotnys to a burden of proof under the statute. This error, however, is harmless because the district court separately concluded that the phrase "my companion" was unambiguous and intended as a descriptive term rather than as a condition. Because those conclusions supply an independent basis for the district court's decision, the misapplication of section 524.3-407 does not impair the validity of the district court's conclusion regarding ambiguity.

II.

The Novotnys also argue that the district court erred by concluding that Palmstein's receipt under the will did not constitute unjust enrichment. We review the district court's denial of the equitable claim of unjust enrichment for an abuse of discretion. *In re Estate of Savich*, 671 N.W.2d 746, 751 (Minn. App. 2003).

An unjust-enrichment claim requires clear and convincing proof that (1) a person received something of value, (2) the recipient was not entitled to the thing of value, and (3) it would be unjust under the circumstances for the recipient to retain the benefit. *Id.*; *Schumacher v. Schumacher*, 627 N.W.2d 725, 729 (Minn. App. 2001). In this context, the term "unjust" is defined as unlawful or unconscionable by reason of the recipient's bad motive. *Id.*

The Novotnys argue that Palmstein's receipt of a bequest under the will would be morally wrong because Palmstein had not been a part of their father's life for years, whereas they maintained a relationship with their father and cared for him during his illness. But this contention of moral wrong addresses only one of three requisite elements of an unjust-enrichment claim. Because the Novotnys have not established that Palmstein was not entitled to the bequest, the district court correctly concluded that the Novotnys failed to demonstrate the necessary elements of their unjust-enrichment claim. Accordingly, denial of relief on this ground was not an abuse of discretion.

Affirmed.