STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0715

In the Matter of the Estate of:
Vernet Steen, Deceased.

Filed April 14, 2009
Affirmed
Worke, Judge

Kittson County District Court
File No. 35-PR-06-78

Alan B. Fish, Rita Fish-Whitlock, Alan B. Fish, P.A., 102 Second Avenue Northwest, Roseau, MN 56751 (for appellant Connie Steen)

Jeremy A. Klinger, Drenckhahn & Williams, P.A., 423 North Main, P.O. Box 159, Warren, MN 56762 (for respondents Chad & Michelle DeCoux)

Bruce V. Nielsen, P.O. Box 247, Lancaster, MN 56735 (for respondent Rosemarie Steen)

Considered and decided by Toussaint, Chief Judge; Worke, Judge; and Randall, Judge.*

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

WORKE, Judge

Appellant Connie Steen, an heir of decedent, challenges the district court's determinations that (1) she was not entitled to a restraining order preventing the personal representative of decedent's estate from selling estate land and (2) the purchase

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

agreement entered into by the personal representative was commercially reasonable. We affirm.

FACTS

Appellant Connie Steen, an heir of decedent Vernet Steen, petitioned the district court for an order precluding respondent Rosemarie Steen, the personal representative of decedent's estate, from selling certain estate land to respondents Chad and Michele DeCoux (the DeCouxs), who are not decedent's heirs. In the alternative, appellant's petition asked the district court to remove the personal representative. The district court denied the petition, and subsequently denied appellant's motion for amended findings of fact or a new trial. Appellant challenges the denial of her petition.

D E C I S I O N

A person having an interest in a decedent's estate may petition the district court for an order restraining the personal representative from following a course of action if the personal representative "may take some action" which would unreasonably jeopardize the interest of the applicant or another interested person. Minn. Stat. § 524.3-607(a) (2008).

Finding of Fact

Appellant challenges the district court's finding that selling the property to appellant for the same amount offered by the DeCouxs would not benefit the estate. Generally, a finding of fact is reviewed for clear error. *In re Estate of Boysen*, 309 N.W.2d 45, 47 (Minn. 1981); Minn. R. Civ. P. 52.01. Here, however, appellant argues that the district court failed, under Minn. Stat. §§ 524.3-715(23), 524.2-402 (2008), and

In re Estate of Riggle, 654 N.W.2d 710, 714 (Minn. App. 2002), to adequately consider the desire of the heirs to keep the land in the family. Thus, appellant asserts that the finding was based on a misunderstanding of the law. Determining the applicable legal standard and interpreting statutes are legal questions that appellate courts review de novo. *Goldman v. Greenwood*, 748 N.W.2d 279, 282 (Minn. 2008).

Minn. Stat. §§ 524.3-715(23), 524.2-402

"Except as restricted or otherwise provided by the will or by an order in a formal proceeding and subject to the priorities stated in section 524.3-902, a personal representative, acting reasonably for the benefit of the interested persons, may properly" convey land-related interests of an estate. Minn. Stat. § 524.3-715(23). Because decedent died without a will, because no other order is at issue here, and because "the priorities stated in section 524.3-902" address the order of abatement of devises in a will, the relevant portion of Minn. Stat. § 524.3-715(23) is the portion requiring a personal representative to act reasonably for the benefit of interested persons. And on the record, appellant has not otherwise shown that the personal representative failed to act for the benefit of interested persons.

Appellant argues that, under Minn. Stat. § 524.2-402, selling the land to the DeCouxs is not reasonably for the benefit of the interested persons because that statute "exempt[s] the transfer of homesteads from claims of creditors." But Minn. Stat. § 524.2-402(c) absolves a homestead from claims of creditors if the homestead passes by "descent or will." Here, appellant seeks to purchase the land, not to acquire it by descent

or will. Also, this case does not involve a creditor's claim against the land. Therefore, Minn. Stat. § 524.2-402 does not support appellant's argument.

Estate of Riggle

Appellant argues that *Riggle* recognizes a priority for members of a decedent's family to acquire land in a decedent's estate and that here the district court gave inadequate consideration to the heirs' preference to keep the property in the family. *Riggle*, however, is distinguishable. There, the decedent was separated from his wife and died intestate. *Riggle*, 654 N.W.2d at 712. His wife petitioned for decedent's interest in what had been the marital home, which she alleged was decedent's homestead when he died, and also sought her elective share in decedent's augmented estate. *Id.* at 712-13. Whether the decedent abandoned the marital home as his homestead was disputed. *Id.* at 713-14. Under the relevant statutes, if he had abandoned the home as his homestead, his interest in it would go into his estate and be divided accordingly, but if he had not abandoned it as his homestead, his interest would pass to his wife outright. *Id.* In addressing whether the decedent had abandoned the marital home as his homestead, *Riggle* analogized to debtor-creditor caselaw. *Id.* at 714-15. Based on that analogy, *Riggle* upheld the idea of resolving close questions of whether a decedent has abandoned a marital homestead by finding no abandonment, thereby protecting the welfare of the decedent's spouse and children. *Id.* at 715-16.

Here, appellant is not the decedent's spouse or child, there is no question of abandonment of a homestead or any other dispute regarding the composition of the estate, and there is no debtor-creditor dispute. Therefore, the extent of appellant's inheritance

from the estate, as opposed to her proposed purchase from the estate, is not at issue or in danger of being reduced based on how the asset is characterized for probate purposes. For this reason, *Riggle* does not support appellant's argument.

Legal Standard

Noting that the district court's denial of appellant's petition was based in large part on the finding that appellant's offer to buy the land provided no benefit to the estate beyond that provided by the DeCouxs' offer, appellant argues that the district court erred because the correct legal standard is whether it appeared "to the court that the personal representative otherwise may take some action which would jeopardize unreasonably the interest of the applicant or of some other interested person." Minn. Stat. § 524.3-607(a). Identification of the applicable legal standard is a legal question. *Goldman*, 748 N.W.2d at 282.

Appellant asserts that the district court's better-for-the-estate standard fails to give adequate weight to the heirs' desire to keep the land in the family. Under Minn. Stat. § 524.3-912 (2008), subject to the rights of creditors and certain others, a decedent's "competent successors" may, by "written contract," agree to alter what they would be entitled to receive under the laws of intestacy, and the personal representative "shall abide by the terms of the agreement" subject to certain limitations not at issue here. Minn. Stat. § 524.3-912. Because appellant has not produced a written agreement signed by all of the heirs addressing how they propose to keep the land in the family, we reject her argument on this point. *Cf. Swan v. Swan*, 308 Minn. 466, 466, 241 N.W.2d 817-18, (1976) (stating that while settlement of an estate by stipulation "is generally favored," to

be valid an agreement to do so "must contain the elements of a valid contract" and holding that the absence of "a valid and enforceable contract" required affirming the district court's refusal to enforce a purported agreement).

Appellant also argues that Minn. Stat. § 524.3-607, under which she sought the restraining order, allows invocation of equity and that if all heirs want the land sold to an heir, the personal representative must do so. *See* Minn. Stat. § 524.1-103 (2008) (stating that "[u]nless displaced by the particular provisions of this chapter, the principles of law and equity supplement its provisions"). We reject appellant's equity-based argument for two reasons. First, she was not diligent in offering to buy the land. The personal representative did not agree to sell the land to the DeCouxs until after (1) appellant failed to respond to a letter soliciting offers from the heirs and stating that if they did not buy the land it would be offered for sale to third parties; (2) the DeCouxs' offer, one of a number received in response to advertisements, was received, was subsequently increased, and was then identified by the personal representative's attorney as a "very good offer"; and (3) appellant was given an additional opportunity to make an offer, was "push[ed]" by the personal representative for an offer, but still did not make a timely offer. *Cf. Kurz v. Gramhill*, 269 N.W.2d 68, 71 (Minn. 1978) (stating that "[e]quity does not require that defendants suffer for the less diligent conduct of plaintiffs").

Second, ignoring the untimeliness of appellant's offer, the record shows that, through the date that the personal representative agreed to sell the land to the DeCouxs, there was doubt about appellant's ability to finance a purchase of the land. If appellant acquired the land but defaulted on her resulting obligations and lost the property to

foreclosure, the land would not remain in the family. Also, because appellant testified that she will not pay more than the DeCouxs' offer, not only would the personal representative's taking of what might seem the riskier path of selling to appellant not promise any additional benefit to the estate or the heirs, but that course of conduct could have run afoul of the portion of Minn. Stat. § 524.3-607 precluding personal representatives from taking actions which unreasonably jeopardize the interest of interested persons.

Commercially Reasonable Sale

The district court found that entering the purchase agreement with the DeCouxs "was not a breach of [the personal representative's] fiduciary duty" and that, in light of the appraisal presented to the court, the DeCouxs' offer was reasonable. Appellant argues that the personal representative "sold the property in a commercially unreasonable manner." Whether a sale is commercially reasonable is a fact question. *In re Estate of King*, 668 N.W.2d 6, 10 n.1 (Minn. App. 2003). Therefore, the district court's finding that the price was reasonable will not be altered unless it is clearly erroneous. Minn. R. Civ. P. 52.01.

Appellant argues that the sale was commercially unreasonable because the personal representative advertised the sale for two weeks. But appellant neither identifies a reasonable period to advertise the property, nor suggests that additional or higher offers would have been received if the advertisement had run longer. Therefore, her argument attempts to shift the burden of this appeal from herself, to show that the district court clearly erred in finding the sale commercially reasonable, to respondents or to this court

to show that the sale was commercially reasonable. The burden to show error, however, remains on appellant. *See Midway Ctr. Assocs. v. Midway Ctr., Inc.*, 306 Minn. 352, 356, 237 N.W.2d 76, 78 (1975) (stating that, to prevail, an appellant must show prejudicial error); *Loth v. Loth*, 227 Minn. 387, 392, 35 N.W.2d 542, 546 (1949) (stating that appellate courts cannot assume district court error); *Luthen v. Luthen*, 596 N.W.2d 278, 283 (Minn. App. 1999) (applying *Loth*). And appellant fails to meet her burden on this point, especially in light of her stated refusal to pay more for the property than the DeCouxs.

While neither the parties nor the district court identify a definition of a commercially reasonable sale, here the personal representative (1) asked the heirs, by letter, if they wanted to buy the land and did not get any response; (2) advertised, received "more than several" offers, rejected the highest offer (the DeCouxs' first offer); (3) received the DeCouxs' second offer, which was $15,000 higher than their first offer; and (4) unsuccessfully "push[ed]" appellant, weeks after the deadline in the advertisement and months after the deadline in the letter, to match the Decouxs' second offer. Only then, and after being told by counsel that the DeCouxs' second offer was a "very good offer," did the personal representative agree to sell the land to the DeCouxs. On this record, appellant has not shown that the district court clearly erred in finding the sale and the price to be commercially reasonable. *Cf.* Minn. Stat. § 336.9-627(b)(1), (2) (2008) (stating that commercially reasonable sales under the Uniform Commercial Code

are "in the usual manner on any recognized market[,]" or "at the price current in any recognized market at the time of the disposition").[1]

Appellant also challenges the commercial reasonableness of the sale by noting that the personal representative obtained no appraisal of the land. But none of the heirs objected to selling the land at the price noted in the personal representative's letter, which was "the assessor's estimated market value." Further, appellant failed to obtain a certified appraisal for purposes of her offer as well as for this litigation, the DeCouxs' certified appraisal valued the property near the amount of their offer, and, as already noted, counsel for the personal representative told the personal representative that the DeCouxs' second offer, which was $64,700 more than the assessor's estimated market value mentioned in the personal representative's letter, was a "very good offer."

Affirmed.

[1] Appellant's failure to even suggest that higher offers would have been received is problematic. She testified that she will not pay more than the DeCouxs' offer. Thus, if the DeCouxs' offer approximates the property's market value, neither appellant nor the estate is financially harmed by a conveyance to the DeCouxs. But if appellant's implication that the property is worth significantly more is correct, she could be seeking to take advantage of the estate by acquiring the land at a low price.