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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-2176**

In re the matter of:
The Colene P. McDonough Living Trust
Dated 2/19/97,
as Amended by a First Amendment Dated 6/16/99.

**Filed August 11, 2009
Affirmed in part and reversed in part
Klaphake, Judge**

Dakota County District Court
File No. 19HA-CV-08-2669

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Considered and decided by Klaphake, Presiding Judge; Minge, Judge; and
Stauber, Judge.

UNPUBLISHED OPINION

KLAPHAKE, Judge

Appellant Ronald Schafer, the personal representative of the estate of Thomas White, challenges the district court's order dismissing his petition asking for a trust accounting and removal of respondent Francis P. McDonough, Jr., as trustee of the Colene P. McDonough Living Trust. Because the district court correctly concluded that appellant lacks standing to pursue an action against the trust, we affirm the dismissal of

the petition. But because the district court failed to comply with the requirements of Minn. R. Civ. P. 11, we reverse the court's order for attorney fees awarded as a sanction against appellant.

DECISION

Standing

“Standing goes to the existence of a cause of action and, when the facts are not disputed, is a legal issue that this court may determine.” *Joel v. Wellman*, 551 N.W.2d 729, 730 (Minn. App. 1996), *review denied* (Minn. Oct. 29, 1996). The question of standing, because it is fundamental to the right to bring an action, cannot be waived and may be raised at any time. *In re Horton Irrevocable Trust*, 668 N.W.2d 208, 212 (Minn. App. 2003).

In Chapter 501B (2008) on trusts, a “trustee” or a “person interested in the trust” is permitted to petition the district court for an order concerning a trust. Minn. Stat. § 501B.16 (2008). Chapter 501B does not define the term “person interested in the trust.” But under the related Uniform Probate Code, Minn. Stat. § 524.1-201, subd. 24 (2008), an “interested person” is defined to include “heirs, devisees, children, spouses, creditors, beneficiaries and any others having a property right in or claim against the estate of a decedent.” This section further clarifies that “[t]he meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.” *Id.* On the most fundamental level, an interested party must have a property right in or claim against the estate.

The relevant facts are not in dispute on the issue of standing. Colene McDonough died on September 24, 2001. Under the terms of the trust, her estate was to be distributed to ten beneficiaries, including her brother, Thomas White, who was to receive a 26% share. But the trust also provides that, “[i]f THOMAS W. WHITE should predecease me or die before complete distribution of the trust share, the trust share set aside for [him] shall terminate and my Trustee shall distribute the balance of the trust property to the other beneficiaries named in this Article in proportion to their respective shares.” White died on February 28, 2007. When appellant filed this petition in July 2008, the trust proceeds had not yet been distributed.

By operation of the terms of the trust, White’s interest in the trust terminated on the day of his death, because he died before the trust proceeds were distributed. *See In re Estate of Mealey*, 695 N.W.2d 143, 146 (Minn. App. 2005) (stating that appellant was not an interested party when he was not a beneficiary and had no financial stake in the estate). Because White’s estate had no beneficiary interest in the trust, it was not an interested party and could not petition the court for an order concerning the trust. In short, White’s estate lacked standing. Although appellant, as personal representative, argues that he “stands in the shoes of the deceased,” he has no claim precisely for that reason: White’s estate has no interest in the Colene P. McDonough trust. Therefore, the district court did not err by dismissing appellant’s petition for lack of standing.

Attorney Fees

Appellant challenges the district court’s award of attorney fees under Minn. R. Civ. P. 11. The court sua sponte awarded attorney fees, commenting that “there is some

frivolity in [appellant] filing this rather meritless petition. As a result, an award of some attorney's fees is justified under Minnesota Rules of Civil Procedure 11.02 and 11.03." This court reviews the district court's order for sanctions for an abuse of discretion. *Gibson v. Coldwell Banker Burnet*, 659 N.W.2d 782, 787 (Minn. App. 2003).

The district court may "[o]n its own initiative . . . enter an order describing the specific conduct that appears to violate Rule 11.02" and order "an attorney, law firm, or party to show cause why it has not violated Rule 11.02 [requiring party to represent to court that pleading is not presented to harass or delay and is not frivolous]." Minn. R. Civ. P. 11.03(a)(2). If the court acts sua sponte, "[m]onetary sanctions may not be awarded . . . unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against" the sanctioned party. Minn. R. Civ. P. 11.03(b)(2).

Generally, this court "narrowly" construes rule 11 sanctions. *Pratt Inv. Co. v. Kennedy*, 636 N.W.2d 844, 851 (Minn. App. 2001). We will reverse an award of sanctions for failure to comply with the procedures mandated by the rule. *See In re Claim for No-Fault Benefits Against Progressive Ins. Co.*, 720 N.W.2d 865, 874 (Minn. App. 2006) (reversing award of sanctions for failure to comply with safe-harbor rule), *review denied* (Minn. Nov. 22, 2006); *Gibson*, 659 N.W.2d at 789 (same). Although both of those cases involved parties moving for sanctions, the rule is equally clear about the procedure a court must follow in imposing sanctions on its own initiative. Minn. R. Civ. P. 11.03(b)(2). Here, the court did not issue an order to show cause or provide appellant the opportunity to defend against an award of sanctions and did not describe "the specific

conduct” that appeared to violate the rule. We conclude that the court abused its discretion and therefore reverse the attorney fees award.

Affirmed in part and reversed in part.