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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1395**

Douglas Fagerhaugh, et al., petitioners,
Appellants,

vs.

Keiji Yoshimura,
Respondent.

**Filed March 16, 2010
Affirmed
Peterson, Judge**

Crow Wing County District Court
File No. 18-PX-06-001755

Andrew P. Muller, Minneapolis, Minnesota (for appellants)

James W. Nelson, James W. Nelson Law Office, Brainerd, Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Peterson, Judge; and Wright,
Judge.

UNPUBLISHED OPINION

PETERSON, Judge

In this appeal from a summary judgment issued after remand in the Minnesota portion of this multi-state probate dispute, appellants argue that the district court misread Minn. Stat. §§ 524.2-703, .3-408 and, as a result, incorrectly determined that the

disposition of certain real estate is to occur under Minnesota intestacy law rather than California law. We affirm.

FACTS

In 1960, Ole Fagerhaugh bought a tract of land in Crow Wing County, Minnesota with shoreline on three lakes, Ossawinnamakee, Strawberry, and Kimble. In 1964, Ole Fagerhaugh married Shizuko Fagerhaugh (decedent), and in 1982, Ole Fagerhaugh conveyed the Minnesota property to himself and decedent as joint tenants.

In 1992, Ole Fagerhaugh and decedent executed a joint will that states in its entirety:

WE, OLE FAGERHAUGH and SHIZUKO FAGERHAUGH, of the City and County of San Francisco, State of California, being of sound and disposing mind and memory, and not acting under the fraud, menace, duress or undue influence of any person whomsoever, hereby make, publish and declare this to be our joint last will and testament.

FIRST: We, and each of us, hereby revoke any and all wills and codicils to wills heretofore made by us or either of us.

SECOND: We, and each of us, declare that we are husband and wife, that all of our property is community in nature, and that we have no children.

THIRD: We hereby give, devise, and bequeath all of our property as follows:

(A) If OLE FAGERHAUGH predeceases SHIZUKO FAGERHAUGH, all such property shall belong to and be distributed to SHIZUKO FAGERHAUGH.

(B) If SHIZUKO FAGERHAUGH predeceases OLE FAGERHAUGH, all such property shall belong to and be distributed to OLE FAGERHAUGH.

FOURTH: We hereby nominate and appoint the survivor of us to act as executrix or executor, as the case may be, to serve without bond.

FIFTH: Should any person not named as a legatee herein make a claim to our estate, or any part thereof, as an heir or otherwise, then we direct that such person shall receive the sum of One Dollar (\$1.00) and no more.

Ole Fagerhaugh died in 1994, and decedent acquired sole legal title to the Minnesota real estate as surviving joint tenant. In 1997, decedent sold the part of the property with shoreline on Kimball Lake. Decedent still owned the remainder of the real estate when she died in 2005. Neither Ole Fagerhaugh nor decedent was survived by a parent or child.

In September 2005, the Colusa County Superior Court in California appointed respondent Keiji Yoshimura, decedent's next of kin, as personal representative of decedent's estate. In July 2006, Yoshimura petitioned the district court in Crow Wing County, Minnesota, for formal probate of decedent's estate in Minnesota and appointment of himself as personal representative.

In September 2006, appellants (Ole Fagerhaugh's nieces, nephews, great-nieces, and great-nephews) filed a petition in the district court in Crow Wing County requesting that California law be applied if title to the Minnesota property passed through intestacy. The district court determined that Minnesota's intestacy laws applied and granted summary judgment for respondent.

Appellants filed an appeal from the summary judgment in this court and also filed a petition to determine heirship in California. This court stayed the appeal pending the

outcome of the California proceeding. The California court found that it did not have jurisdiction over decedent's Minnesota real property. The California court also found that because decedent's will gave all of her assets to her husband, who predeceased her, and did not include a contingent disposition, the will did not effectively dispose of her assets. The California court concluded that real property located in California and decedent's personal property would be distributed according to California law. This court dissolved the stay of the appeal and remanded to the district court for consideration of the impact of the California order. The district court determined that the California order had no impact on the summary judgment and, therefore, the summary judgment remained in full force and effect.

DECISION

On appeal from summary judgment, we review the record to “determine whether there are any genuine issues of material fact and whether a party is entitled to judgment as a matter of law.” *In re Collier*, 726 N.W.2d 799, 803 (Minn. 2007). A genuine issue of material fact exists if the evidence would “permit reasonable persons to draw different conclusions.” *Gradjelick v. Hance*, 646 N.W.2d 225, 231 (Minn. 2002). We view the evidence in the record “in the light most favorable to the party against whom judgment was granted.” *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993).

Statutory interpretation is a question of law, which we review de novo. *Koes v. Advanced Design, Inc.*, 636 N.W.2d 352, 358 (Minn. App. 2001), *review denied* (Minn. Feb. 19, 2002).

Minnesota has adopted the Uniform Probate Code (UPC). *See* Minn. Stat. § 524.1-101 (2008) (stating that Minn. Stat. ch. 524 “shall be known and may be cited as the ‘Uniform Probate Code.’”). The UPC applies to “(1) the affairs and estates of decedents, missing persons, and persons to be protected, domiciled in this state, and (2) *the property of nonresident decedents located in this state* or property coming into the control of a fiduciary who is subject to the laws of this state.” Minn. Stat. § 524.1-301 (2008) (emphasis added). “‘Nonresident decedent’ means a decedent who was domiciled in another jurisdiction at the time of death.” Minn. Stat. § 524.1-201(31) (2008). Because decedent was domiciled in California at the time of her death, she is a nonresident decedent, and the UPC applies to the Minnesota real estate that she owned when she died.

The UPC states: “Real estate (excluding a vendor’s interest in a contract for conveyance) located in this state with regard to which the decedent died intestate and the proceeds of the sale, mortgage or lease of any such real estate available for distribution, shall pass according to the laws of this state.” Minn. Stat. § 524.3-816 (2008). The UPC also states:

The intestate estate of the decedent consists of any part of the decedent’s estate not allowed to the decedent’s spouse or descendants under sections 524.2-402, 524.2-403, and 524.2-404,^[1] and not disposed of by will. The intestate estate passes by intestate succession to the

¹ Minn. Stat. §§ 524.2-402, 524.2-403, and 524.2-404, govern descent of the homestead, exempt property, and a family allowance. There is no claim that they apply to decedent’s Minnesota real estate.

decedent's heirs as prescribed in this chapter, except as modified by the decedent's will.

Minn. Stat. § 524.2-101(a) (2008).

Because sections 524.2-402, 524.2-403, and 524.2-404 do not apply to decedent's Minnesota real estate and we agree with the California court's determination that decedent's will did not effectively dispose of her assets, the Minnesota real estate is part of decedent's intestate estate. Ordinarily, the intestate real estate would pass by intestate succession to decedent's heirs as prescribed in the UPC. But appellants argue that the ordinary rule that the Minnesota real estate passes by intestate succession according to Minnesota law was modified by decedent's will.

Citing *In re Estate of Burshiem*, 483 N.W.2d 175 (N.D. 1992), appellants argue that because decedent's will states that decedent is "of the City and County of San Francisco, State of California," decedent selected California law as the local law that is to determine the meaning and legal effect of the will and, therefore, decedent's intestate Minnesota real estate should pass by intestate succession according to California law.

The UPC provides:

The meaning and legal effect of a governing instrument is determined by *the local law of the state selected in the governing instrument*, unless the application of that law is contrary to the provisions relating to the elective share described in part 2, the provisions relating to exempt property and allowances

described in part 4, or any other public policy of this state otherwise applicable to the disposition.

Minn. Stat. § 524.2-703 (2008) (emphasis added).

The UPC also provides:

A final order of a court of another state determining testacy, the validity or construction of a will, made in a proceeding involving notice to and an opportunity for contest by all interested persons must be accepted as determinative by the courts of this state if it includes, or is based upon, a finding that the decedent was domiciled at death in the state where the order was made.

Minn. Stat. § 524.3-408 (2008).

We need not determine whether decedent's statement in her will that she is "of the City and County of San Francisco, State of California," is sufficient to demonstrate that decedent selected California law to be used to determine the meaning and legal effect of her will; even if decedent selected California law, appellants have not identified any provision in California law that purports to grant a California probate court jurisdiction over real estate located outside California. Appellants are attempting to have the California rules for distributing intestate property applied to decedent's Minnesota real estate without first demonstrating that, under California law, the California intestacy rules apply to Minnesota real estate that decedent owned when she died.

The party seeking reversal has the burden of showing error. *Bloom v. Hydrotherm, Inc.*, 499 N.W.2d 842, 845 (Minn. App. 1993), *review denied* (Minn. June 28, 1993). Because the California court determined that it did not have

jurisdiction over the Minnesota real estate and appellants have failed to cite any authority that suggests that under California law, California intestacy rules control the disposition of intestate real estate located outside California, appellants have not demonstrated that the district court erred in concluding that Minnesota law controls the distribution of decedent's Minnesota real estate. Accordingly, we affirm the district court's grant of summary judgment.

Affirmed.