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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2029**

In re: Estate of Michael G. Wolf.

**Filed June 20, 2011
Affirmed
Johnson, Chief Judge**

Wabasha County District Court
File No. 79-PR-10-160

Joseph Howard Yennie, Pine Island, Minnesota (pro se appellant)

Wayne L. Mehrkens, Ryan & Grinde, Ltd., St. Charles, Minnesota (for respondent Dale J. Wolf)

Raymond L. Hansen, O'Brien & Wolf, L.L.P., Rochester, Minnesota (for respondent Keith Schlessner)

Considered and decided by Connolly, Presiding Judge; Johnson, Chief Judge; and Ross, Judge.

UNPUBLISHED OPINION

JOHNSON, Chief Judge

Joseph Howard Yennie filed a claim against the estate of Michael G. Wolf to obtain reimbursement for expenditures he made on repairs to Wolf's home and for mortgage payments he made on Wolf's behalf. The district court concluded that two other claims have priority over Yennie's claim: a statutory claim to exempt property filed

by Wolf's daughter and the fees and expenses of administration incurred by the personal representative of the estate. We affirm.

FACTS

Yennie's claim against the estate is based on a written agreement that he and Wolf executed in August 2004. The agreement, which is entitled "Investment Agreement Conveying Partial Interest in Real Property," relates to Wolf's home in the city of Plainview. The agreement provides that Yennie will assist Wolf in redeeming the property from foreclosure, make payments to bring the mortgage up to date, and perform repairs to the house in anticipation of its sale. The agreement further provides that, upon the sale of the property, Wolf would receive the first \$47,500 in proceeds; Yennie then would receive reimbursement for the expenditures he made; and Wolf and Yennie then would evenly split the remaining proceeds.

Wolf died intestate on January 22, 2010. Yennie filed a claim against the estate in the amount of approximately \$28,000, which reflects expenditures he made pursuant to the 2004 written agreement. The personal representative disallowed the claim. Meanwhile, Wolf's daughter, his only surviving heir, filed a claim against the estate in the amount of \$10,000.

In September 2010, the personal representative petitioned the district court for an order allowing an interim accounting of the estate and for payment of the daughter's claim. In November 2010, the district court issued an order that listed the assets of the estate, the value of which totaled approximately \$16,000. The district court's order also identified three claims against the estate: Wolf's daughter's claim of \$10,000, Yennie's

claim of approximately \$28,000, and a claim by another person in the amount of \$10,000. The district court concluded that the daughter's claim, as a statutory claim to exempt property, has priority over Yennie's claim and the other person's claim. The court directed the personal representative to distribute \$10,000 to Wolf's daughter. The district court permitted the personal representative to petition the court for payment of any unpaid fees and expenses. And the district court directed the personal representative to distribute any remaining assets to Yennie and the other claimant. Yennie appeals.

D E C I S I O N

Yennie argues that the district court erred by determining that Wolf's daughter's statutory claim has priority over his claim. We review the district court's order to determine whether the findings are clearly erroneous or whether the district court erred in applying the law. *In re Estate of Simpkins*, 446 N.W.2d 188, 190 (Minn. App. 1989).

A. Nature of Yennie's Claim

Before discussing the issue of priority of claims, we first address Yennie's argument that the 2004 written agreement constitutes an equitable mortgage. In some situations, an agreement relating to real property may be deemed an equitable mortgage even if the word "mortgage" does not appear in the agreement. *See, e.g., Fraser v. Fraser*, 702 N.W.2d 283, 287 (Minn. App. 2005), *review denied* (Minn. Oct. 18, 2005). "Where the purpose and effect of [a] transaction is to give security on real property for a debt, the transaction is a mortgage." *Gagne v. Hoban*, 280 Minn. 475, 479, 159 N.W.2d 896, 899 (1968).

In this case, however, it is irrelevant whether the 2004 written agreement is an equitable mortgage. Even if that agreement were deemed to be an equitable mortgage, such status would have no effect on Yennie's claim against Wolf's estate. The holder of a security interest in real property need not make a claim against a decedent's estate. *See Somsen, Mueller, Lowther & Franta, PA v. Estates of Olsen*, 790 N.W.2d 194, 196-97 (Minn. App. 2010). Rather, a mortgagee may proceed against the encumbered real estate of a decedent without filing a claim. *See* Minn. Stat. §§ 524.3-104, -803(c)(1) (2010); *Harter v. Lenmark*, 443 N.W.2d 537, 540 (Minn. 1989). Additionally, a personal representative may pay a secured creditor even if that creditor has not filed a claim against a decedent's estate. *See Somsen, Mueller, Lowther & Franta, PA*, 790 N.W.2d at 196 (citing Minn. Stat. § 524.3-814 (2008)). And if a personal representative refuses to pay a secured claim, the mortgagee may commence a foreclosure by advertisement. *See id.* at 195.

Yennie, however, did not seek to foreclose on his purported mortgage. Rather, he chose to file a claim against Wolf's estate in this probate proceeding, even though secured claims are exempt from probate claims proceedings. Minn. Stat. §§ 524.3-104, -803(c)(1). If a mortgagee elects to file a claim against an estate in a probate proceeding instead of commencing foreclosure proceedings, the district court must treat the claim in the manner prescribed by the probate code. Thus, we need not decide whether the 2004 written agreement is an equitable mortgage.

B. Priority of Claims

Yennie argues that the district court erred by giving priority to Wolf's daughter's claim over his claim. Before any claims are paid from a decedent's estate, the decedent's surviving spouse and children are entitled to the decedent's homestead, certain exempt property, and a family allowance. Minn. Stat. §§ 524.2-401 to .2-405 (2010). If the decedent has no surviving spouse, the decedent's children are entitled to, among other things, one automobile as well as \$10,000 worth of household furniture, furnishings, appliances, and personal effects. Minn. Stat. § 524.2-403(b) (2010). If the estate lacks \$10,000 worth of exempt property, the children are entitled to cash or other personal property to make up a deficiency in exempt property. *Id.* § 524.2-403(c) (2010). "Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate," with an exception related to state-financed medical care that is not relevant to this case. *Id.* § 524.2-403(d) (2010); *see also id.* § 524.2-403(f) (2010) (providing exception).

After a decedent's surviving spouse and children receive their entitlement under the statute, a personal representative may pay the other claims. If an estate's assets are insufficient to pay all creditors' claims, the personal representative shall prioritize the payment of claims in the following order:

- (1) costs and expenses of administration;
- (2) reasonable funeral expenses;
- (3) debts and taxes with preference under federal law;
- (4) . . . expenses of the last illness of the decedent . . . ;

- (5) reasonable and necessary medical, hospital, and nursing home expenses for the care of the decedent during the year immediately preceding death;
- (6) debts with preference under other laws of this state, and state taxes;
- (7) all other claims.

Minn. Stat. § 524.3-805(a) (2010). An adult child's entitlement to exempt property does not have priority over the first three types of claims. Minn. Stat. § 524.2-403(f) (citing Minn. Stat. § 524.3-805(a)(1), (2), (3)).

Yennie's claim is within the seventh category, "all other claims." If Wolf's daughter is a minor child, her statutory claim has priority over all seven types of claims in section 524.3-805(a), including Yennie's claim. If Wolf's daughter is an adult, her statutory claim still has priority over Yennie's claim. It is irrelevant whether Yennie's claim is secured or unsecured for purposes of determining priority; the applicable provisions of the probate code treat secured claims in the same manner as unsecured claims. *See* Minn. Stat. §§ 524.2-403, .3-805. Thus, the district court did not err by concluding that Wolf's daughter's claim has priority over Yennie's claim.

Yennie also argues that the district court erred in the manner in which it distributed the remaining assets in the estate. The district court allowed payment of the daughter's statutory claim and payment of the fees and expenses of the personal representative. The district court ordered that the remaining balance be shared evenly by Yennie and the other claimant. Yennie does not explain why such a distribution is

erroneous. He does not identify any applicable law that would require a different result.

Thus, we have no basis for disturbing that part of the district court's order.

Affirmed.