STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1378

In re the Supervised Estate of:
William J. DeFore a/k/a William Joseph DeFore, Deceased.

Filed May 18, 2020
Reversed and remanded; motion denied
Ross, Judge

Hennepin County District Court
File No. 27-PA-PR-17-1083

Kay Nord Hunt, Bryan R. Feldhaus, Lommen Abdo, P.A., Minneapolis, Minnesota (for appellant)

Thomas K. Cambre, Merrigan, Brandt, Ostenso & Cambre, P.A., Hopkins, Minnesota (for respondent Lorrie Wood)

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Considered and decided by Segal, Chief Judge; Ross, Judge; and Cochran, Judge.

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

ROSS, Judge

Decedent William DeFore's surviving spouse attempted to claim her spousal elective share, filing a document captioned, "Written Statement of Claim," rather than the statutorily named, "petition for the elective share." For the next year and a half, the district court treated the document as if it were a petition for elective share, as did the parties, who engaged in discovery to prepare to try the question of the amount of the elective share. But the district court then granted an heir's motion to treat the document as invalid and to

effectively foreclose any elective-share allocation based on the document's misnaming and a purported failure to notify an interested party of the election. Because the district court treated the document as if it were properly named and the parties likewise took substantial litigation steps treating the document as if it were properly named, we hold that the document adequately informed the court and the parties that the surviving spouse was seeking her elective share. And because the hearing-notice requirement is not required to perfect a petition for elective share, we hold that the petition satisfied the applicable statutory requirements. We reverse.

FACTS

This appeal concerns a dispute over the estate of William DeFore between his two children. William and Barbara DeFore had been married for 65 years when, in 2016, Barbara left the marital home and filed for divorce. The separation divided the family, with daughter Lorrie Wood generally aligning with William and son Daniel DeFore generally aligning with Barbara. William responded to the divorce petition by removing Barbara as a beneficiary on two of his retirement accounts and instead designating Lorrie and her husband John Wood as beneficiaries. William also closed his Wells Fargo joint bank account with Barbara and opened a new bank account, naming Lorrie as joint account holder. And William purchased a riding lawn mower and named Lorrie co-owner.

William died on August 23, 2017, and the district court therefore dismissed Barbara's divorce petition. Probate proceedings initiated on August 31, 2017, with Daniel petitioning to be appointed as the estate's special administrator. Daniel petitioned to admit

William's lost will, which was dated September 1983, and the probate court admitted the will and appointed Daniel as the estate's personal representative.

Daniel's attorney sent Barbara a notice informing her of her statutory right to take an elective spousal share of William's estate. Barbara responded promptly on October 16, 2017, by filing in the district court a document entitled, "Written Statement of Claim." The document stated, "The Estate is or will become indebted to me as follows: Pursuant to Minn. Stat. § 524.2-202 et seq., my elective share, including supplemental elective share, of decedent's augmented estate." It specified, "The nature of the claim is: statutory spousal rights." The district court and the parties treated the "Written Statement of Claim" as though Barbara had petitioned for her elective spousal share. For example, the district court set the matter for trial and, in a pretrial conference call, the parties negotiated how to proceed with discovery to determine the assets that Barbara would receive through election. They then exchanged interrogatories to identify all assets in the net probate estate. Lorrie filed a "Statement of Issues" for trial, stating that the sole question to be litigated was Barbara's elective share. The parties narrowed the dispute to three assets in which William had granted Lorrie an interest after the separation: William's two retirement accounts naming Lorrie and her husband John as beneficiaries, William's checking account jointly owned by Lorrie, and William's lawn mower. The district court continued the trial multiple times, but the trial on the amount of Barbara's elective spousal share never occurred because she died on March 6, 2019.

On March 28, 2019, Lorrie changed her litigation approach. Rather than continue to litigate the amount of Barbara's spousal share, she took the position that Barbara had

forfeited the right to any spousal share. She moved the district court to determine that Barbara was time-barred from filing for an election, arguing that Barbara's October 2017 filing had failed to comply with the statutory procedure for seeking a spousal share and the deadline for refiling had long passed.

The district court granted Lorrie's motion, reasoning that Barbara's filing failed to comply with the requirements of Minnesota Statutes section 524.2-211(a) (2018) because Barbara's "Written Statement of Claim" purporting to seek a spousal elective share did not constitute a "petition" within the wording of the statute and because she did not give proper notice to Lorrie's husband, an interested party.

Daniel appeals.

D E C I S I O N

Daniel argues that the district court erred by deciding that Barbara's elective-share filing was inadequate. Lorrie's husband John Wood filed a motion asking us to dismiss him as a party to the appeal. For the following reasons, we reverse the district court's decision, and we deny John's motion.

I

Daniel appeals from the district court's decision, which the district court characterized as "summary judgment," granting Lorrie's motion. Whether the district court properly granted summary judgment is a question of law that we review de novo. *In re Estate of Kotowski*, 704 N.W.2d 522, 526 (Minn. App. 2005), *review denied* (Minn. Dec. 21, 2005). We review whether there are any genuine issues of material fact and whether the district court erred in applying the law, viewing the evidence in the light most

favorable to the party against whom summary judgment was granted. *Id.*; *see also* Minn. R. Civ. P. 56.01.

This appeal requires us to construe the provision of the probate code that proscribes how a surviving spouse must seek an elective share:

> [T]he election must be made by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within nine months after the date of the decedent's death, or within six months after the probate of the decedent's will, whichever limitation later expires. The surviving spouse must give notice of the time and place set for hearing to persons interested in the estate and to the distributees and recipients of portions of the augmented estate whose interests will be adversely affected by the taking of the elective share.

Minn. Stat. § 524.2-211(a). The statute unambiguously states how and when "the election must be made." A surviving spouse must make the election "by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within nine months after the decedent's death." The district court determined that Barbara's "Written Statement of Claim" failed to comply with the statute for two reasons: it was not a "petition" and Barbara did not give notice of the hearing to Lorrie's husband, who would be adversely affected by Barbara being allocated her elective share. Neither reason is sustainable.

The district court erred by concluding that Barbara's filing was not a petition. The district court must liberally construe the probate code rather than elevate its form over its substance. Minn. Stat. § 524.1-102(a) (2018). The district court reasoned that Barbara's filing was labeled as a written statement of claim rather than as a petition and that the

probate code defines "claims" and "petition[s]" differently. *See* Minn. Stat. § 524.1-201(8), (41) (2018). Although Barbara's document was not captioned correctly as a petition seeking to make an election for her spousal share, its substance made perfectly clear what it was. It cited to "Minn. Stat. § 524.2-202," the elective-share statute, and clearly stated that the estate "is or will become indebted" based on her "elective share, including supplemental elective share." The parties' and district court's treatment of Barbara's request demonstrates that it was obviously a petition in claim's clothing because all treated it exactly as a petition seeking to make an election for her spousal share. The district court set (and then reset multiple times) a trial date to resolve her election, the parties engaged in discovery on that issue, and Lorrie, who later moved the court to treat the document as invalid, had long before described the trial issue triggered by the document precisely as Barbara's elective share: "Barbara DeFore is making a claim for a supplemental elective share of Decedent's Estate in an amount to be determined."

Caselaw supports our rejection of a form-over-substance approach to Barbara's filing by teaching that technical defects in probate filings are not fatal. In *Peterson v. Marston*, the supreme court affirmed this court's holding that creditors properly presented a claim against a decedent's estate even though their document did not comply with technical statutory requirements. 362 N.W.2d 309, 310, 314 (Minn. 1985). Creditors had entered into a contract for deed with the decedent. *Id.* at 310. They sent a letter to the attorney for the estate, indicating that they had seen a notice by publication requiring debts of the estate to be submitted and asking if they needed to take any action regarding their contract for deed. *Id.* at 310–11. After the attorney responded, telling the creditors they

need not file anything with the probate court, the creditors filed no formal claim. *Id.* at 311. When the creditors later sued on the contract, the district court determined that the creditors' letter was not a "claim" under the probate code because it was framed instead as an inquiry. *Id.* at 311–12. But we reversed, and the supreme court upheld our reversal, holding that, despite the letter's failure to expressly demand payment, in context it evinced their intent to make a claim. *Id.* at 312. The court reasoned that "the form in which a claim is presented is not important as long as it contains sufficient information to enable the personal representative to determine its extent and character." *Id.* at 313. The letter therefore sufficiently presented a claim against the estate. *Id.*

Like the creditors' letter in *Peterson,* Barbara's filing evinced her intent. It cited the elective-share statutes to describe why "[t]he Estate is or will become indebted to" her. The facts of this case more emphatically demonstrate a technicality-over-substance injustice than the facts in *Peterson*; as we have discussed, the district court here, along with all the parties, for a lengthy period took every action on Barbara's filing to demonstrate that they knew it represented Barbara's intent to make a spousal-share election. That she captioned it with the word "claim" instead of "petition" is, at least under the circumstances here, a technical error with absolutely no meaningful effect. No one asserts that Barbara failed to mail or deliver the document to a personal representative or that she failed to file it before the statutory deadline. Applying the plain requirements in the statute, we hold that Barbara's filing was a valid petition for spousal elective share under section 524.2-211(a).

The district court also erred by determining that Barbara's petition was deficient because she did not notify Lorrie's husband John, an interested party. The district court

mistakenly read the statute as requiring notice to interested parties to perfect a petition for a spousal elective share. The statute does indeed require that the surviving-spouse petitioner give notice to all interested persons "of the time and place set for [the] hearing" where the spousal-share issue will be tried. But the statute nowhere conditions the perfection of the surviving spouse's petition on meeting this hearing-notice requirement. It instead omits this procedural hearing requirement from the plainly identified substantive elements of making an election. Other provisions in the probate code outline the method for providing the notice of a hearing. "If notice of a hearing on a petition is required," three permissible methods are available: mailing a copy at least 14 days before the hearing, delivering a copy personally at least 14 days before the hearing, or, if the address or identity of the person cannot be ascertained, publishing in a newspaper for two consecutive weeks with the last publication occurring at least 10 days before the hearing. Minn. Stat. § 524.1-401(a)(1)–(3) (2018). The notice-method statute and the elective-share-proceeding statute together demonstrate that the notice requirement is a prerequisite to the *hearing*, not to perfecting an election. We reject Lorrie's argument that Barbara's failure to notify John of the hearing rendered Barbara's election filing deficient.

Lorrie urges us to review based on an abuse-of-discretion standard of review and affirm on equitable grounds, arguing that we should apply the supreme court's analysis developed in *In re Estate of Kruegel*, 551 N.W.2d 718 (Minn. 1996). The argument would lead us astray. *Kruegel* held that, once the district court declined to find equitable grounds to excuse a deadline breach, our court cannot substitute its own discretionary judgment for that of the district court. *Id.* at 719. Unlike *Kruegel*, which addressed whether a surviving

spouse's *tardy* filing of her elective-share petition could be excused based on equitable considerations, *see id.*, our case involves the purely legal question of whether a *timely* filing comprising the proper *substance* of a petition constituted a valid petition for the elective share. *Kruegel* is therefore inapposite.

We do not intend to suggest that the district court or parties must treat an inaccurately captioned document as a valid spousal-share election. We emphasize that, instead, our decision today rests substantially on the proper substance of Barbara's filing. The district court and the parties repeatedly demonstrated their understanding that the filing—which had the essential elements of a petition and was enough to trigger litigation over the spousal share—was in fact an elective-share petition. We reverse the district court's grant of summary judgment favoring Lorrie, and we remand for the district court to engage in additional proceedings, treating Barbara's filing as her valid petition for a spousal-share election. We offer no opinion as to whether or how Barbara's postfiling death affects the spousal-share analysis or proceedings.

II

Lorrie's husband John asks us to dismiss him as a party to this appeal, arguing that no appealable issues concern him and that this court lacks personal jurisdiction over him. We deny his motion. We observe that it conflicts with the position taken by Lorrie, who insists that his status as an interested party required Barbara to notify him of her spousal-share election. John is a proper party under the rules. The "party appealing" to the court of appeals is the appellant, and the "adverse party" is the respondent. Minn. R. Civ. App. P. 143.01. An adverse party is one "who would be prejudiced by a reversal or

modification of an order, award, or judgment." *Banal-Shepherd v. Shepherd*, 829 N.W.2d 426, 428 (Minn. App. 2013), *review denied* (Minn. May 21, 2013). John is named as a beneficiary in the two retirement accounts at issue in the elective-share dispute. His affidavit filed in the district court asserted that he was an "interested party" because of his stake in those accounts. And the district court found that he "would be affected by [Barbara's] taking of the elective share." The amount of Barbara's elective share could impact John because the amount could reduce what he might otherwise receive from the retirement accounts. John is an adverse party who, according to Daniel's proof of service, was served with copies of the notice of appeal and other relevant pleadings.

John also argues that he is not a proper party to this appeal because he was never served with notice of a spousal-share hearing and therefore never made a proper party. The contention rests on the same mistaken premise that Lorrie asserts: Barbara's election was statutorily deficient because John never received proper notice of Barbara's election under Minnesota Statutes section 524.2-211(a). Because we have held that the hearing-notice requirement is not a prerequisite to perfecting a surviving spouse's election under the statute, and because no hearing has yet been held on the elective-share issue, the question of whether John was properly served notice of the hearing is not ripe for review.

Reversed and remanded; motion denied.