

STATE OF MINNESOTA  
IN SUPREME COURT

A21-1035

Court of Appeals

Anderson, J.

In re the Estate of: Joseph Rocco Figliuzzi,  
aka Joseph Figliuzzi, aka Joe Figliuzzi, Deceased.

Filed: August 31, 2022  
Office of Appellate Courts

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appellant Gina Bicknell.

Kay Nord Hunt, Michelle K. Kuhl, Lommen Abdo, P.A., Minneapolis, Minnesota; and

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Linda Grady.

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S Y L L A B U S

1. Because supervised administration in probate under Minn. Stat. § 524.3-501 (2020) is “a single in rem proceeding” in which a district court retains “continuing authority” until final distribution of the estate or termination of the proceedings, the district court order determining that certain wetland credits were property of the estate is not an immediately appealable “final order” under Minn. R. Civ. App. P. 103.03(g).

2. A constructive trust is not an injunction; thus, the district court order denying the request for a constructive trust is not immediately appealable as the denial of an injunction under Minn. R. Civ. App. P. 103.03(b).

Affirmed.

## OPINION

ANDERSON, Justice.

Joseph Figliuzzi created a trust for holding wetland credits worth \$2.6 million. Because of a family dispute, Figliuzzi sought to hold these credits in his own name rather than in the trust. After Figliuzzi's death, Gina Bicknell, one of Figliuzzi's daughters, filed an "Interim Petition to Confirm the Legal Status of Non-Probate Assets" that sought to confirm that the trust, and not her father, owned the credits. The petition also sought to establish a constructive trust over the disputed credits. The district court concluded that Figliuzzi owned the credits at the time of his death and denied the petition to create a constructive trust. Bicknell appealed. The court of appeals then dismissed the appeal for lack of jurisdiction, concluding that the order regarding ownership of the credits was not immediately appealable under Minn. R. Civ. App. P. 103.03(g), and that the issue regarding the constructive trust was moot. On appeal to our court, Bicknell asserts that the court of appeals erred by dismissing the appeal for lack of appellate jurisdiction. Because we hold that the district court order was not final, did not deny an injunction, and thus was not immediately appealable under either Minn. R. Civ. App. P. 103.03(g) (appeal from a "final order") or (b) (appeal from an order on an "injunction"), we affirm the order of the court of appeals dismissing the appeal.

## FACTS

In 1987, Joseph R. Figliuzzi created the Figliuzzi Family Trust (the Trust). He named himself trustee during his lifetime and named two of his daughters, Katharine Smrdel and Gina Bicknell, as successor co-trustees upon his death. He designated his wife

and five children as beneficiaries of the Trust, with the Trust to be divided into equal shares among his children upon his wife's death. The Trust property included a 163.1-acre former rice paddy that the Trust restored to a fully functional wetland (the restored wetland).

From 2012 to 2017, Figliuzzi acted on behalf of the Trust to establish a wetland bank site with the restored wetland under state and federal law, creating wetland credits that could be purchased by individuals who are required by law to replace wetlands. *See Breza v. City of Minnetrista*, 725 N.W.2d 106, 108 n.3 (Minn. 2006) (describing the wetland bank system). In 2012, the Trust granted a perpetual conservation easement over the restored wetland to the State through the Board of Water and Soil Resources (BWSR). *See* Minn. R. 8420.0705, subp. 5 (2021) (requiring a conservation easement for all state wetland bank sites). In 2016, Figliuzzi, acting as trustee, set up a wetland bank account for the Trust to keep a record of the wetland credits created by the restored wetland. And in 2017, the Trust entered into a mitigation banking instrument (MBI) with the United States Army Corps of Engineers (Corps) to establish, under federal law, a wetland mitigation bank with the restored wetland. The wetland credits held in the wetland bank account were worth approximately \$2.6 million.

In mid-2018, Bicknell and Smrdel supported a petition for an emergency guardianship of Figliuzzi's wife, against Figliuzzi's wishes. After this event, Figliuzzi attempted to transfer ownership of the restored wetland and the associated wetland credits from the Trust to himself. In late 2018, BWSR accepted Figliuzzi's formal request to change the wetland bank account holder from the Trust to himself in his individual capacity. In early 2019, Figliuzzi executed a quitclaim deed on behalf of the Trust,

transferring the restored wetland to himself. And in late-2019, the Corps recognized Figliuzzi as the restored wetland property owner and the responsible party for complying with the terms of the MBI after accepting an addendum to the MBI reflecting this change.

Figliuzzi died on April 19, 2020. Soon after, the district court appointed Bicknell as special administrator to protect Figliuzzi's assets while locating his will. Figliuzzi had executed a will in 2019, in which he named his niece, Linda Grady, as his personal representative and provided for the distribution of his estate. The will was located, and on September 9, 2020, the court formally probated the will and approved Grady as the personal representative of the estate in a supervised administration under Minn. Stat. § 524.3-501 (2020).

Grady submitted an initial inventory of Figliuzzi's estate on February 4, 2021, which included the wetland credits. In response, Bicknell filed a petition under Minn. Stat. § 524.3-505 (2020) asking the court to rule that the wetland credits belonged to the Trust. Bicknell asserted that the actions Figliuzzi took in 2018 and 2019 before his death did not successfully transfer ownership of the wetland credits from the Trust to Figliuzzi personally because BWSR had a formal process for transferring ownership of the wetland credits, and Figliuzzi did not follow that procedure. Bicknell also requested that the wetland credits be held in constructive trust "to protect and preserve" the asset during any ongoing ownership dispute.

On June 21, 2021, the district court denied Bicknell's petition in a one-page order with little analysis, concluding that the wetland credits belonged to the estate. The court did not address Bicknell's request to impose a constructive trust, in effect denying her

request. After first seeking reconsideration, Bicknell filed a notice of appeal from the June 21, 2021 order. After giving the parties an opportunity to brief whether the court of appeals had jurisdiction to hear the appeal, the court dismissed Bicknell's appeal, holding that the district court order on the ownership of the wetland credits was not appealable under Minn. R. Civ. P. 103.03(g) and the request that the wetland credits be held in a constructive trust during the pendency of any further dispute was moot and therefore not appealable under Minn. R. Civ. P. 103.03(b). *In re Estate of Figliuzzi*, No. A21-1035, Order at 5–6 (Minn. App. filed Sept. 14, 2021). We granted review on both issues of appellate jurisdiction.

### **ANALYSIS**

This case arises from an interim order issued under Minn. Stat. § 524.3-505. Section 524.3-505 authorizes the district court to issue “[i]nterim orders approving or directing partial distributions, sale of property[,] or granting other relief” in a supervised probate administration. Here, Bicknell sought “other relief,” namely, a determination that the wetland credits were the property of the Trust and imposition of a constructive trust over the credits during the pendency of any ongoing ownership dispute.

Minnesota Statutes section 525.71 (2020) governs appeals of probate proceedings. Section 525.71(a) contains a list of 17 specifically appealable orders. Section 525.71(b) allows appeals of any order appealable under the Minnesota Rules of Civil Appellate Procedure. And section 525.71(c) disallows appeals of certain orders. Orders under section 524.3-505 are not categorically appealable, and the parties agree that the order of the district court in this case is not among the 17 specifically appealable orders under section

525.71(a).<sup>1</sup> The parties also agree that the order of the district court is not barred from appeal under section 525.71(c).

Bicknell argues that, contrary to the conclusion of the court of appeals, the district court order determining ownership of the wetland credits and denying a constructive trust is immediately appealable.<sup>2</sup> She asserts that the order falls under section 525.71(b)<sup>3</sup> because the ownership determination is immediately appealable under Minnesota Rule of Civil Appellate Procedure 103.03(g) as a final order, and the constructive trust issue is immediately appealable under Rule 103.03(b) as an injunction order.<sup>4</sup> The question of

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<sup>1</sup> But some orders under section 524.3-505 that grant certain types of relief may be appealable under section 525.71(a). *Compare* Minn. Stat. § 525.71(a)(3), (12) (allowing appeal of orders authorizing the sale of real estate and determining distribution, respectively), *with* Minn. Stat. § 524.3-505 (authorizing the court to issue interim orders approving or directing the sale of property and approving or directing partial distributions).

<sup>2</sup> Bicknell does not dispute that the district court’s conclusions in its June 21, 2021 order would be reviewable on an appeal from the final judgment. *Cf. Gordon v. Microsoft Corp.*, 645 N.W.2d 393, 398 (Minn. 2002) (“Generally, interlocutory appeals are disfavored and, ordinarily, only ‘final judgments’ are appealable.”). Instead, Bicknell’s argument is that the “[s]peedy and efficient administration of probate depends on the immediate appealability” of the order here.

<sup>3</sup> Minnesota Statutes section 525.71(b) provides that “[a]ppeals to the court of appeals may also be taken from any other properly appealable order pursuant to the Rules of Civil Appellate Procedure.”

<sup>4</sup> Bicknell also argues that the constructive trust issue is appealable under Rule 103.03(g). But because Bicknell failed to raise this issue in her petition for review, we do not address it. *See State v. Hunn*, 911 N.W.2d 816, 821 (Minn. 2018) (holding that an issue not raised in the petition for review is forfeited). Additionally, Bicknell argues that we should address the merits of the appeal despite not raising it in her petition for review. Although we may choose to address an issue not raised in a petition for review in the interests of justice, we do so only rarely; we see no reason to conclude that an exception to the general rule applies here. *See Dykes v. Sukup Mfg. Co.*, 781 N.W.2d 578, 584 n.2 (Minn. 2010).

whether the order is immediately appealable therefore depends on how we interpret these two rules as they relate to supervised administration in probate. We review the interpretation and application of statutes and the rules of appellate procedure de novo. *In re Estate of Janecek*, 610 N.W.2d 638, 641 (Minn. 2000); *St. Croix Dev., LLC v. Gossman*, 735 N.W.2d 320, 324 (Minn. 2007).

## I.

We first address whether Rule 103.03(g) permits immediate appeal of the ownership determination made by the district court in its June 21, 2021 order on Bicknell’s petition. Appeals are allowed from any “final order . . . affecting a substantial right made in an administrative or other special proceeding.” Minn. R. Civ. App. P. 103.03(g). An order is “final” under Rule 103.03(g) when “the matter is conclusively terminated so far as the court issuing the order is concerned,” and the court anticipates no further action on the matter. *City of Chaska v. Chaska Township*, 135 N.W.2d 195, 197 (Minn. 1965). This happens when the court “finally determines some positive legal right of the appellant relating to the action.” *Weinzierl v. Lien*, 209 N.W.2d 424, 424 (Minn. 1973). An order is considered final when “it determine[s] all issues presented to the court in the [particular] proceeding.” *In re GlaxoSmithKline PLC*, 699 N.W.2d 749, 754 (Minn. 2005).

Bicknell argues that the order was final because it ended the district court’s inquiry as to ownership of the wetland credits, a positive legal right, by concluding that the estate owned the credits. After the district court issued the order, Bicknell contends, it would no longer consider any legal arguments about ownership of the wetland credits. This would conclusively terminate the matter of ownership. Grady counters that the order was not

final because the district court issued it as an interim order in a supervised administration. She argues that interim orders are not final because, by definition, interim orders are any order other than the final order. Grady asserts that the ownership determination was not final because it represented just one aspect of the district court's ongoing authority over the wetland credits that would continue until termination of the supervised administration.

We agree with Grady. Supervised administration in probate provides for a "single in rem proceeding to secure complete administration and settlement of a decedent's estate." Minn. Stat. § 524.3-501. Supervised administration differs from other probate proceedings, which require a district court to consider each proceeding involving the same estate as independent of one another. *See* Minn. Stat. § 524.3-107 (2020). In contrast, the court in a supervised administration exercises *ongoing* supervision and authority over the estate until final distribution of the estate or "other order terminating the proceeding." Minn. Stat. § 524.3-501.

The district court is authorized to issue interim orders during the pendency of the supervised administration to approve or direct partial distribution, sell property, or grant other relief. Minn. Stat. § 524.3-505. Instead of the district court holding independent proceedings for all issues in the probate of an estate, the district court in supervised administration can grant interim orders until the close of probate proceedings via final distribution or termination. Interim orders under section 524.3-505, then, are not final for the purpose of appealability under Rule 103.03(g). Thus, the interim order of the district court determining that the wetland credits belonged to the estate was not final. Because



the order lacks finality, it cannot be appealed under Rule 103.03(g), and Bicknell is not entitled to relief on this ground.

## II.

Next, we address the appealability of the district court's denial of Bicknell's request for a constructive trust under Rule 103.03(b). An appeal is allowed "from an order which grants, refuses, dissolves or refuses to dissolve, an injunction." Minn. R. Civ. P. Rule 103.03(b). We have also applied this rule to orders that grant or deny injunctions in effect but not in name. *See Howard v. Svoboda*, 890 N.W.2d 111, 114–15 (Minn. 2017).

Bicknell asserts that the constructive trust issue is appealable under Rule 103.03(b) as a denial of injunctive relief because constructive trusts include mandatory injunctions, or, in the alternative, have the effect of an injunction. In contrast, Grady argues that the plain text of Rule 103.03(b) does not apply to constructive trusts because they are not injunctions, and even if constructive trusts have the effect of an injunction, our case law does not support treating the district court order in this case as a denial of an injunction.

Determining whether a constructive trust is an injunction requires examining the key features of each. An injunction, for its part, can be either preventive or mandatory. A preventive injunction restrains a party from acting and preserves the status quo of the parties until the court determines their rights. *Bellows v. Ericson*, 46 N.W.2d 654, 658–59 (Minn. 1951). In contrast, a mandatory injunction requires a party to act, which sometimes may change the status of the parties, but still very often with the goal and effect of restoring the original status quo. *Id.* A preliminary or temporary injunction, whether preventive or mandatory, is particularly focused on preserving or restoring the status quo during the

pendency of the matter. *Id.* at 659. A temporary injunction ensures that “the effect of the judgment” is not “impaired by the acts of the parties during the litigation.” *Berggren v. Town of Duluth*, 304 N.W.2d 24, 27 (Minn. 1981). The party seeking an injunction must establish the absence of an adequate legal remedy and the necessity of the injunction to prevent irreparable harm. *Cherne Indus., Inc. v. Grounds & Assocs.*, 278 N.W.2d 81, 92 (Minn. 1979).

A constructive trust requires the holder of the title to property to convey that property to another that has a superior equitable ownership claim. *Knox v. Knox*, 25 N.W.2d 225, 228 (Minn. 1946); *see also Wilcox v. Nelson*, 35 N.W.2d 741, 744 (Minn. 1949) (“A constructive trust is a remedial device by which the holder of legal title is held to be a trustee for the benefit of another who in good conscience is entitled to the beneficial interest.”). A constructive trust is appropriate when the district court determines by clear and convincing evidence that, after considering the legal ownership of the property and any equitable claims to the property, the constructive trust is required to prevent unjust enrichment. *In re Estate of Eriksen*, 337 N.W.2d 671, 674 (Minn. 1983). A constructive trust does not preserve the status quo; rather, it attempts to equitably right a wrong in the absence of a remedy at law.

Although a constructive trust directs one party to affirmatively act by conveying property to another, it does not create an injunction. The imposition of a constructive trust is unrelated to the preservation or restoration of the status quo, which is generally a key

feature of injunctions.<sup>5</sup> Additionally, there is “no unyielding formula” that we follow to impose a constructive trust. *Iverson v. Fjoslien*, 213 N.W.2d 627, 628 (Minn. 1973). In contrast, we consider five factors when determining whether a temporary injunction is an appropriate remedy. *Miller v. Foley*, 317 N.W.2d 710, 712 (Minn. 1982). Our differing treatment of these remedies confirms that constructive trusts are neither injunctions nor equivalent to injunctions. Thus, the district court’s denial of the constructive trust is not appealable as a denial of an injunction under Rule 103.03(b).

Although at times we have allowed appeals under Rule 103.03(b) of orders that grant or deny injunctions in effect but not in name, we do not do so here. Bicknell sought a constructive trust to “protect and preserve” the wetland credits during the pendency of any ongoing dispute. Even assuming Bicknell requested a constructive trust with the intent of receiving injunctive relief, her intent is not determinative. Instead, when determining whether we will treat a district court order as one that effectively grants or denies an injunction, we look to whether the court analyzed the motion or petition as one requesting an injunction, whether it reviewed any of the equitable factors for injunctive relief, or whether it considered the merits of the underlying action when addressing the requested relief. *See Howard*, 890 N.W.2d at 114–15; *City of Rochester v. Kottschade*, 896 N.W.2d 541, 545 n.1 (Minn. 2017). Here, the district court did not analyze the request for a

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<sup>5</sup> Constructive trusts are used as a remedy in many different contexts. *See, e.g., Knox*, 25 N.W.2d at 229 (imposing a constructive trust in divorce proceedings); *Marquette Appliances, Inc. v. Econ. Food Plan, Inc.*, 97 N.W.2d 652, 656 (Minn. 1959) (contemplating the imposition of a constructive trust in garnishment proceedings). Thus, even if a constructive trust could have been used here as a form of injunctive relief, we cannot say that all constructive trusts are injunctions.

constructive trust as one for injunctive relief, it did not review the equitable factors for injunctive relief, and, in fact, it did not address the requested relief at all. *See Howard*, 890 N.W.2d at 114–15; *Kottschade*, 896 N.W.2d at 545 n.1. Thus, we do not treat the district court order as an order denying injunctive relief appealable under Rule 103.03(b).<sup>6</sup> Because the district court order was not a denial of injunctive relief, we need not address whether Bicknell’s request for a constructive trust was moot.

### CONCLUSION

For the foregoing reasons, we affirm the order of the court of appeals dismissing the appeal.

Affirmed.

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<sup>6</sup> Our holding here addresses only the constructive trust issue, and we do not reach any other claim for alternative relief, including injunctive relief, during the supervised administration of this estate.