STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1596
A20-0508

In re the Estate of: Stanley George Zych, Deceased,

and

In the Matter of the Revocable Trust Agreement of
Stanley George Zych Dated May 23, 2013.

Filed September 14, 2020
Affirmed in part and reversed in part
Reyes, Judge

Big Stone County District Court
File No. 06-PR-17-224

Julian C. Zebot, Peter C. Hennigan, Maslon LLP, Minneapolis, Minnesota (for appellants)

Pamela A. Steckman, Jonathan D. Wolf, Rinke Noonan, St. Cloud, Minnesota (for respondents)

Considered and decided by Reyes, Presiding Judge; Frisch, Judge; and Kirk, Judge.*

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

REYES, Judge

In these consolidated probate appeals, appellants argue that the record does not support the district court's findings that (1) decedent lacked testamentary capacity; (2) decedent lacked mental capacity to make a gift; and (3) appellants unduly influenced

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

decedent. They also argue that (4) the district court judge should have recused; (5) the district court abused its discretion by holding appellants liable for respondents' and the estate's attorney fees; and (6) the district court erroneously relied on hearsay to find that certain property is estate property. We affirm in part and reverse in part.

FACTS

After a diagnosis of Parkinson's disease in the late 1980s, decedent Stanley George Zych depended entirely on caregivers by 2008. Following the probate of his wife's estate, who had passed away in 2005, decedent executed a will in 2007 that devised his estate to his seven children, appellants Thomas Zych, James Zych, and Joyce Wilson and respondents Wayne Zych, Dale Zych, Janet Zych, and Sandra Steffes.[1] The parties do not dispute the validity of the 2007 will.

Decedent's estate included farmland worth approximately $3,840,000 in 2013, farm equipment and stored grain, and certificates of deposit (CDs) worth $608,027.19 in 2009. The CDs had a value of approximately $85,000 when he passed away, due to Thomas and Joyce transferring them into an investment account that lost approximately $189,000 and cashing out some of them.

In his 2007 will, decedent gave his farmland to his four sons, Thomas, James, Wayne, and Dale, who were all farmers. The will gave his CDs to his daughters, Joyce, Janet, and Sandra, who were not farmers. It divided the estate residue equally among the

[1] Because multiple appellants and respondents have the same last name, we use the first names of appellants and respondents in subsequent references.

children and nominated Larry Deutsch, the owner of a bank at which decedent had some of his CDs and a checking account, as personal representative.

In 2013, decedent executed a new will and trust. Approximately one month later, he gifted land to each of his children except Wayne and Dale. The 2013 will disinherited Wayne and Dale and gave the land that the 2007 will had devised to them instead to sisters Joyce, Janet, and Sandra. It maintained the same real-property devises to Thomas and James as the 2007 will. But with the 2013 land gifts, Thomas and James received their farmland inheritance approximately four years earlier. The 2013 will also created a trust for the estate residue, but it appointed Thomas and Joyce as trustees and co-personal representatives.

Attorney Bill Leuthner (the attorney), drafted the 2013 will based on what appellants told him and decedent's head nods. Appellants and decedent met with the attorney twice before decedent signed the will on May 23, 2013. Respondents were not present at these meetings. Two unrelated individuals witnessed the will. Decedent passed away on May 29, 2017, at the age of 96.

In November 2017, Janet petitioned to probate the 2007 will and identified Thomas, James, and Joyce as respondents. Among other relief, she sought to void the 2013 will and trust and the 2013 real-estate gifts. She also requested that respondents pay her attorney fees and costs. Appellants objected and filed a responsive probate petition contending that decedent revoked his 2007 will by executing the 2013 will. They requested that Janet pay their attorney fees and costs.

In July 2018, the district court appointed a neutral third-party trustee and personal representative (the neutral). The district court ultimately authorized him to obtain counsel because appellants were not cooperating, which made it difficult for him to perform his duties. The district court also granted certain injunctive relief and ordered appellants to provide an accounting of decedent's estate.

In November 2018, appellants moved for the district court judge to recuse himself because the judge's former law partner drafted decedent's 2007 will. The district court judge had informed the parties of this potential conflict at an April 2018 hearing, and neither party requested his recusal at that time. The district court held a hearing on appellant's motion and denied it.

Following a five-day trial in January and February 2019, the district court found that decedent lacked capacity to execute both the 2013 will and trust and the 2013 land gifts and that appellants unduly influenced him when he executed those documents.

In its order, the district court described appellants' demeanor as "markedly different" from the generally "straightforward manner" in which respondents testified, which caused the district court to "find [appellants] less credible." It found the "in-court evasions" of Thomas and Joyce "remarkable," contributing to the length of the trial and making them less believable. It found that Joyce "repeatedly refused to answer questions directly, or evaded or deflected them" and "made statements that were demonstrably not true." It stated that appellants' out-of-court actions also affected its credibility finding, such as Joyce hiding assets and refusing to tell the neutral their location, James swearing at and threatening physical violence to the neutral, Thomas making it "exceedingly

difficult" for the neutral to access property, and all three failing to comply with an order to repay funds to the estate. The district court also noted that the neutral had to retain a forensic accountant, Value Consulting Group (VCG), because appellants "misappropriated and mishandled" decedent's estate assets. It stated that witness demeanor is often a "fairly neutral factor," but that "[t]his case is a notable exception, and the Court found these factors to be palpable and of significant assistance in its determination of disputed facts."

The district court denied appellants' petition to probate the 2013 will, admitted the 2007 will, and voided the quitclaim deeds for the real-estate gifts. It further found that respondents had incurred $242,326.03 in attorney fees that "were reasonable and appropriate under the circumstances" and for the benefit of the estate. It held appellants jointly and severally liable for the fees, less the yet-to-be-determined amount that an uncontested probate would have required. It also held them liable for the fees and costs incurred by the neutral in retaining VCG. It denied appellants' request for attorney fees and costs.

Appellants filed a notice of appeal. In an order filed October 29, 2019, a special-term panel of this court determined that appellants prematurely challenged the award of attorney fees and costs because the district court had not yet determined the award amounts. We therefore dismissed the part of the appeal related to the awards.

In November 2018, the district court held a non-evidentiary hearing on the award amounts and other matters. It found that respondents and the neutral would have spent $31,000 on an uncontested probate of the 2007 will and therefore ordered appellants to pay $211,326.03. It also determined ownership of certain assets, including the "Wilson trailer,"

which it found to be estate property. Appellant then appealed the award of attorney fees, and this court consolidated that appeal with the remainder of the original appeal.

D E C I S I O N

I. The district court did not clearly err by finding that respondents met their burden of showing that decedent lacked testamentary capacity.

Appellants argue that the district court's finding that decedent lacked testamentary capacity is clearly erroneous because the record does not support its underlying findings that (1) decedent's Parkinson's obscured whether his head nods reflected assent or not and (2) he suffered from dementia that prevented him from executing the 2013 documents. We disagree.

We review a district court's finding of testamentary capacity for clear error. *In re Estate of Torgersen*, 711 N.W.2d 545, 550 (Minn. App. 2006), *review denied* (Minn. June 20, 2006). We view the evidence and inferences from the evidence in the light most favorable to the district court's decision. *In re Estate of Anderson*, 384 N.W.2d 518, 520 (Minn. App. 1986). Findings of fact are clearly erroneous only if we are "left with the definite and firm conviction" that the district court has made a mistake. *See In re Estate of Moulton*, 365 N.W.2d 335, 338 (Minn. App. 1985). Even if we would have reached a different conclusion on testamentary capacity had we first considered the matter, we do not reverse if the evidence also supports the district court's finding. *In re Healy's Estate*, 68 N.W.2d 401, 403 (Minn. 1955). We also give great deference to findings based on credibility determinations. *See Alam v. Chowdhury*, 764 N.W.2d 86, 89 (Minn. App. 2009).

Making a will or a revocable trust requires the same capacity. Minn. Stat. § 501C.0601 (2018). "Any person 18 or more years of age who is of sound mind may make a will." Minn. Stat. § 524.2-501 (2018). The party challenging a will must prove that the testator lacked testamentary capacity. Minn. Stat. § 524.3-407 (2018).[2]

Testamentary capacity requires that a testator "understand the nature, situation, and extent of his property and the claims of others on his bounty or his remembrance, and he must be able to hold these things in his mind long enough to form a rational judgment concerning them." *Healy*, 68 N.W.2d at 403. In reviewing testamentary capacity, we consider (1) whether the property disposition is reasonable; (2) decedent's "conduct within a reasonable time before and after executing the will;" (3) any previous adjudication of mental capacity; and (4) any "expert testimony about the testator's physical and mental condition." *Torgersen*, 711 N.W.2d at 552 (citing *Anderson*, 384 N.W.2d at 520). Making a will requires less mental capacity than contracting generally, "[a]nd even a person under a conservatorship may have sufficient capacity to execute a will." *Id.* at 553-54.

The district court did not explicitly consider these factors, but its findings went to the first two factors. Factors three and four do not apply here. Therefore, we review factors one and two in turn.

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[2] Respondents argue that caselaw does not clearly assign this burden. But the caselaw they cite placing the burden on the proponent of a will predates the 1974 enactment of Minn. Stat. § 524.3-407, which places the burden on will contestants. *See* Minn. Laws ch. 442, art. 3, pt. 4, at 1045; *see, e.g.*, *In re Jenks' Estate*, 189 N.W.2d 695, 698 (Minn. 1971); *In re Holden's Estate*, 113 N.W.2d 87, 91 (Minn. 1962). To the extent caselaw predating the enactment of Minn. Stat. § 524.3-407 is contrary to that statute, we conclude that the caselaw is now stale.

A. Reasonableness of the property disposition

The district court found that Wayne and Dale were two of the four children who farmed, and to treat them differently would be inconsistent with decedent's past practices. It found that decedent "was very fond of his younger sons Wayne and Dale" and that he would ask his caregivers each day to drive to see Wayne and Dale. The district court contrasted this with his relationship with Thomas and James, who decedent suspected were stealing his crops and selling his equipment. It further found that decedent had made provisions in his 2007 will to protect any inheritance for his children who were in bankruptcy, but he made no such provisions in 2013 for the two who were in bankruptcy then. The record supports these findings. For example, decedent's son-in-law testified that decedent described James as a "thief" and that decedent had expressed concern that James was taking things from his farm. And decedent's long-time tax preparer of 37 years testified that decedent preferred the farming practices of Wayne and Dale.

Appellants argue that a "testator may make an unjust, unreasonable, and unfair will if he chooses," citing to *In re Estate of Forsythe*, 22 N.W.2d 19, 26 (Minn. 1946). While true, *Forsythe* does not prevent a district court from weighing the reasonableness of the distribution in a will when assessing the testator's competency to make a will, and *Torgersen*, 711 N.W.2d at 552, directs it to do just that. Appellants also contend that excluding Wayne and Dale is reasonable because they had received greater portions of land than had their siblings from their mother's estate. But decedent executed his 2007 will after Wayne and Dale received their mother's inheritance, and Thomas testified that decedent created the 2007 will specifically in connection with her passing and the

distribution of her estate. Decedent did not provide less for Wayne and Dale than his other children in 2007. The record supports that the property disposition in the 2013 will is not reasonable.

B. Testator's conduct

The district court found that decedent had "steady cognitive decline starting in at least 2008, and by 2013 he suffered from significant dementia." Because of limited medical records from the time surrounding the 2013 will, the district court based its findings on decedent's medical records from 2008 to 2012 and 2015 and on witness testimony about decedent's ability to recall his property accurately and remember family in 2013.

Decedent's medical records support that he experienced declining mental capacity over this period. In December 2008, decedent gave power of attorney to Thomas and Joyce after sustaining two falls. At a doctor's appointment that month, decedent replied that it was 1990 when asked the year. The doctor's notes relating to a knee replacement decedent received in September 2009 stated that he did not know the day of the week. Following two "freezing" episodes over a few days in August 2012, during which decedent could not move or respond to stimulation, doctors diagnosed him with motor aphasia that prevented him from using the muscles around his mouth to speak coherently. The doctor's notes stated that "[h]e did not make an awful lot of sense verbally" and that his Parkinson's caused him to move his head and neck constantly. Decedent had no memory of his freezing episodes, which occurred approximately monthly in 2012. By 2013, Joyce served as

decedent's primary caregiver. Joyce did not take decedent to the doctor for about two years, from late 2012 to late 2014.

The doctor's notes from an April 2015 appointment stated that decedent "has had significant cognitive decline and I suspect he has a fairly significant dementia related to his Parkinson disease." The notes go on to state, "Regarding cognitive difficulties, we did discuss that he most likely does have dementia. We did discuss consideration for doing neuropsychologic testing, but I think that the patient is likely too demented to be able to meaningfully participate in this therapy." The examination records described decedent's "Judgment/Insight" as "Poor," that he was "[o]riented to person, place (except floor), but not time (except knows it is spring, but not month or year)," and that he had "[g]lobal memory impairment."

Testimony from several witnesses further supports the district court's finding. For example, Dale testified that decedent was "slowing down" in his mental abilities in 2009, and that "[h]is sentences got very short. His questions got very short[]" by 2011. He testified that, beginning in 2013, it was "very hard to carry on a conversation" with decedent, and it was not clear if decedent understood or not. Wayne noticed decedent's mental abilities decline in 2010, continuing in 2011 to 2012. Janet testified that in 2009, "[i]t was hard to carry on a conversation with [decedent]. He had—he had trouble following you when you were talking about stuff." She testified that, in 2010, he nodded his head "quite a bit" during conversations and it was difficult to have a conversation with him. Dale's wife testified that, by 2010, decedent would call her the wrong name and that, after 2013, he "sometimes didn't recognize [her]." Sandra testified that decedent had

stopped being conversant by 2012 and that sometimes while talking to him, he "would just get . . . that clear staring look. Well, then you would just kind of stop and then I would try again. And it was like he didn't remember what I was talking about the first time so [I would] just try something else . . . ." Janet's husband testified that decedent's ability to converse changed in 2012, when he would fall asleep during conversations and "ask questions that didn't make any sense."

Appellants nonetheless argue that the record does not support the district court's findings, in large part because no medical expert testified. But medical-expert testimony is neither necessary nor conclusive of testamentary capacity and "is merely evidence to be weighed and considered by the trier of fact." *In re Congdon's Estate*, 309 N.W.2d 261, 267 (Minn. 1981). They further argue that the medical records show that decedent's Parkinson's-related head movements were distinguishable from his affirmative head nods. But Sandra testified that decedent's head nods were "[n]ot really" a way of knowing that he understood something. And the attorney testified that he knew that decedent had Parkinson's and that parts of his body would shake or tremor, but he did not know that Parkinson's may cause a person's head to nod. In addition, Thomas testified that, when the attorney reviewed the will before decedent signed it, "I don't believe that he read the—read, you know, each paragraph off." And the attorney testified that he did not recall making eye contact with decedent when confirming the plan for his estate in the first meeting.

Appellants in effect ask us to reweigh the evidence and to consider testimony that the district court did not credit. But we review the district court's findings for clear error,

see Torgersen, 711 N.W.2d at 550, and we do not reweigh its credibility determinations, *Alam*, 764 N.W.2d at 89. In reviewing for clear error, we will not reverse a finding on testamentary capacity if the record, even if conflicting, supports it. *See In re Olson's Estate*, 35 N.W.2d 439, 441 (Minn. 1948); *see also Forsythe*, 22 N.W.2d at 22-23 (stating whether decedent's "progressive deterioration of mind . . . le[ft] her bereft of testamentary capacity" is fact question and affirming when evidence conflicting).

The record supports the district court's findings and does not leave us with a "definite and firm conviction that a mistake has been committed." *See Moulton*, 365 N.W.2d at 338. The district court therefore did not clearly err by finding that decedent lacked testamentary capacity to execute the 2013 will and trust.

II. The district court did not clearly err by finding that decedent lacked capacity to make a gift.

Appellants argue that the district court clearly erred in finding that decedent lacked capacity to make a gift because the record shows that he was of sound mind, and the gift furthered his intent to have his land stay in the family. We disagree.

In contrast to the capacity required to execute a will, the capacity required to make a gift is comparable to that required to contract. *See In re Estate of Nordorf*, 364 N.W.2d 877, 880 (Minn. App. 1985) (applying contractual standard rather than testamentary standard to transfer of accounts from sole to joint ownership); *see also Krueger v. Zoch*, 173 N.W.2d 18, 20 (Minn. 1969). Because contracting requires a higher mental capacity than executing a will, *Torgersen*, 711 N.W.2d at 553-54, making a gift also requires a higher capacity than executing a will. Therefore, because we conclude that the district

court did not clearly err by finding that decedent lacked testamentary capacity, it also did not clearly err by finding that he lacked the capacity to make the 2013 real-estate gifts.

III. The district court did not clearly err by finding that appellants exercised undue influence over decedent when he executed his 2013 estate plan.

Appellants argue that the district court clearly erred in finding that they exercised undue influence over decedent because the record does not support its findings that (1) appellants pressured decedent to amend his estate plan; (2) decedent depended on Joyce as his primary caregiver; and (3) there was "no objective reason" or "no discernable reason" why Wayne and Dale did not receive land distributions in the 2013 will and trust. We disagree.

Whether undue influence exists is a question of fact. *In re Reay's Estate*, 81 N.W.2d 277, 282 (Minn. 1957). When evidence of undue influence is conflicting, the district court's findings are final on appeal. *Olson*, 35 N.W.2d at 444. A will contestant has the burden of proving undue influence and must establish it by clear and convincing proof. *In re Estate of Rechtzigel*, 385 N.W.2d 827, 832 (Minn. App. 1986). "Direct evidence of undue influence is not required and is usually unobtainable because the influence is rarely exercised openly in the presence of others. Therefore, the circumstantial evidence must be sufficient to indicate undue influence." *In re Estate of Anderson*, 379 N.W.2d 197, 200 (Minn. App. 1985) (citation omitted), *review denied* (Minn. Feb. 19, 1986). Important factors in proving undue influence include (1) the influencing parties' opportunity to exert influence over the testator; (2) the influencing parties' active participation in the will preparation; (3) a confidential relationship between the influencing parties and the testator;

(4) disinheritance of parties who "probably would have been remembered"; and (5) the influencing parties' persuading the testator to make the will. *In re Estate of Ristau*, 399 N.W.2d 101, 103-04 (Minn. App. 1987).

Evidence that the testator maintained a "strong-willed attitude" on matters throughout the time of the will weighs against a finding of undue influence. *In re Estate of Olsen*, 357 N.W.2d 407, 412 (Minn. App. 1984), *review denied* (Minn. Feb. 27, 1985). But "[a]n entire change from former testamentary intentions is a strong circumstance to support a charge of undue influence." *Olson*, 35 N.W.2d at 446. This is particularly so when the beneficiary charged with exerting undue influence receives a "larger share" under the change than he otherwise would have. *Id.* (quotation omitted). "[A]cts of evasion on the part of the beneficiary sustaining the confidential relation" also support a finding of undue influence. *Id.* at 445.

The district court found that appellants unduly influenced decedent. It again did not refer to relevant legal standards, but its findings nonetheless align with several of the factors from *Ristau*, 399 N.W.2d at 103-04. Relevant to the first and second factors, the district court found that appellants were in control of the 2013 estate planning and were with decedent and spoke on his behalf at all meetings with the attorney. It found that "[decedent] *never spoke* during the meetings with [the attorney]. [He] simply nodded his head at times when [the attorney] looked to him, which the lawyer interpreted as assent to what had been said." The record supports this and shows that decedent never talked to the attorney alone. It also found that James "frequently would berate [decedent]," such as by telling him, "You don't understand what you are talking about!" The testimony of Dale,

Janet, and Wayne supports this. Regarding the third factor, it found that decedent "was totally dependent on caregivers," including Joyce by 2013, and that Joyce and Thomas had power of attorney for decedent.

On the fourth factor, it found that the exclusion of Wayne and Dale from the 2013 will was not objectively reasonable. Appellants again argue that decedent had a discernable reason to not give Wayne and Dale land distributions and that "[t]he fact that not all children are treated equally under a will is insufficient grounds for finding undue influence," citing *In re Mazanec's Estate*, 283 N.W. 745, 748 (Minn. 1939). But "[d]isinheritance of those who probably would have been remembered" is a permissible and important factor for a court to consider. *Ristau*, 399 N.W.2d at 103-04. And, as discussed regarding testamentary capacity, the record supports the district court's findings that decedent looked favorably upon Wayne and Dale and that decedent reasonably would have included them in his will, even after his wife's 2005 real-estate devises to them.

Related to the second and fifth factors, it found that "Joyce told Dale's wife, Christine, that she did not like the fact [decedent] had willed his daughters CDs instead of real estate. Joyce said she was going to remedy this problem." Christine's testimony supports this. The record also supports that appellants accessed decedent's assets without his consent and that they were evasive about doing so before decedent's death and during trial, supporting a finding of undue influence. *See Olson*, 35 N.W.2d at 445.

Appellants argue that the district court did not acknowledge the testimony of the attorney or two non-family-member witnesses to the will, who testified that appellants did not unduly influence decedent. But we do not reweigh the district court's credibility

determinations. *Alam*, 764 N.W.2d at 89. Appellants also argue that decedent was strong-willed, which the district court found. But being strong-willed weighs against undue influence *if* it persists *throughout the time of the will*. *Olsen*, 357 N.W.2d at 412. There is no evidence of decedent exercising his strong will during the period in which he signed the 2013 will. And the record supports that decedent was not always strong-willed. One of his caregivers, Cindee Koll, testified that decedent would "get[] antsy" about wanting to go cash checks and look at his CDs, and "he would get really obsessive about it." Koll would send a text message to Joyce when decedent would not switch from these topics, and Joyce would call decedent, talk to him for 20 or 30 minutes, and decedent would not bring up his finances again.

For these reasons, the district court did not clearly err by finding that appellants unduly influenced decedent. *See id.*

IV. The district court judge did not abuse his discretion by declining to recuse.

Appellants argue that the district court judge should have recused himself because his former law partner drafted decedent's 2007 will while they practiced together and that he incorrectly applied the law to decide not to recuse. We disagree.

Respondents argue that appellants forfeited this issue. First, they cite to *County of Hennepin v. Bhakta*, 922 N.W.2d 194, 197 (Minn. 2019), for the proposition that "[m]atters of trial procedure, evidentiary rulings, and jury instructions occurring at trial are subject to appellate review only if they are assigned as error in a motion for a new trial." But they cite to only nonprecedential decisions to argue that claims of judicial bias are matters of trial procedure on which a party must bring a motion for a new trial. Respondents'

argument lacks precedential support. Second, they argue that appellants forfeited this issue by not timely requesting the recusal. The district court judge advised the parties in April 2018 of the potential conflict and that they could raise the issue in the future. Appellants initially did not express any concerns about recusal, but at the November 2018 hearing they moved for recusal of the district court judge. Appellants fully briefed the issue to the district court, the parties argued it before the district court, and the district court ruled on it. Given this context, appellants did not forfeit their right to request recusal.

We review a district court's decision to deny a recusal motion for an abuse of discretion. *Carlson v. Carlson*, 390 N.W.2d 780, 785 (Minn. App. 1986), *review denied* (Minn. Aug. 20, 1986). "A judge or judicial officer who has presided at a motion or other proceeding . . . may not be removed except upon an affirmative showing that the judge or judicial officer is disqualified under the Code of Judicial Conduct." Minn. R. Civ. P. 63 .03. Rule 2.11(A)(5)(a) of the Minnesota Code of Judicial Conduct provides that "[a] judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including" if "[t]he judge . . . was associated with a lawyer who participated substantially as a lawyer in the matter during such association." Whether circumstances would cause an observer to question a judge's impartiality is an objective analysis. *State v. Burrell*, 743 N.W.2d 596, 601 (Minn. 2008).

The district court judge acknowledged appellants' concerns but also explained that he had ruled on many issues after the parties said they were not concerned about recusal. Regarding the standard for recusing, he stated, "I need to avoid even the appearance of impropriety and I need to disqualify if my impartiality might reasonably be questioned."

Appellants point only to the partner's drafting of the 2007 will as casting doubt on the judge's impartiality. But the parties did not dispute the validity of the 2007 will, and it had no bearing on whether decedent had testamentary capacity in 2013 or whether appellants unduly influenced him. Neither party called the partner as a witness at trial. These facts would not "cause a reasonable examiner to question the judge's impartiality." *Burrell*, 743 N.W.2d at 601; *see also McClelland v. McClelland*, 359 N.W.2d 7, 11 (Minn. 1984) ("[A] judge who feels able to preside fairly over the proceedings should not be required to step down upon allegations of a party which themselves may be unfair or which simply indicate dissatisfaction with the possible outcome of the litigation."), *superseded by statute on other grounds*, Minn. Stat. § 518.552, subd. 3 (1985).

Finally, appellants argue that the district court judge used the incorrect legal standards when he stated that "I can disclose it and then not disqualify," and "I think it might be prejudicial to the estate and to the parties for me to [recuse] at this point." But he then stated the correct standards. *See* Minn. Code of Jud. Conduct, 2.11(A)(5)(a). He ultimately determined that "I believe it is . . . too attenuated and so I am going to stay in the case." Appellants have not shown that the district court judge abused his discretion by declining to recuse. *See Carlson*, 390 N.W.2d at 785.

V. The district court abused its discretion by holding appellants liable for respondents' and the estate's attorney fees.

Appellants argue that no statute permits attorney-fee shifting to a will or trust beneficiary under the circumstances here. We agree.

We review a district court's award of attorney fees for an abuse of discretion, *In re Stisser Grantor Tr.*, 818 N.W.2d 495, 509-10 (Minn. 2012), as well as an order of sanctions, *see Collins v. Waconia Dodge, Inc.*, 793 N.W.2d 142, 145 (Minn. App. 2011), *review denied* (Minn. Mar. 15, 2011). "A district court abuses its discretion when its decision is based on an erroneous view of the law or is inconsistent with the facts in the record." *Stisser*, 818 N.W.2d at 508. We follow the "American rule" "that each party bears [its] own attorney fees in the absence of a statutory or contractual exception." *In re Trusteeship of Tr. of Williams*, 631 N.W.2d 398, 409 (Minn. App. 2001) (quotation omitted), *review denied* (Minn. Sept. 25, 2001).

Respondents argue that appellants forfeited this issue because they failed to argue to the district court at the November 2019 hearing that it could not make them personally liable for attorney fees. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). But the district court had already determined that appellants were liable for the fees, appellants had appealed that determination, and we had dismissed that portion of the appeal because the district court had not yet made a finding on the amount of the fees. Because the district court had already determined the issue, appellants did not forfeit it by not arguing it there.

The district court did not state its basis for holding appellants liable for respondents' attorney fees. Appellants argue that it abused its discretion if it implicitly (1) relied on statutes permitting reimbursement of attorney fees from an estate or trust, *see* Minn. Stat. §§ 524.3-720, 501C.0709(a)(1), .1004 (2018); (2) relied on caselaw permitting trustees to seek reimbursement from frivolous-litigant trust beneficiaries, *see In re Tr. Created by Hill*, 499 N.W.2d 475, 494 (Minn. App. 1993), *review denied* (Minn. July 15, 1993); or

(3) ordered the fees as "backdoor" sanctions without providing sufficient notice. Respondents do not contest appellants' arguments on the first two potential bases for the award, and we agree that neither applies. Instead, respondents counter that the fees served as a sanction under Minn. Stat. § 549.211, subd. 4(b) (2018), Minn. R. Civ. P. 11.03, or the district court's inherent powers, and that appellants had notice that respondents sought attorney fees from the time respondents commenced the action.

A district court must provide a party with notice and an opportunity to respond before imposing sanctions under Minn. Stat. § 549.211, subd. 4(b), Minn. R. Civ. P. 11.03, or the district court's inherent authority. *See* Minn. Stat. § 549.211, subd. 3 (requiring "notice and a reasonable opportunity to respond"), 4(b) (stating district court must "describ[e] the specific conduct that appears to violate subdivision 2 and direct[] . . . [the] party to show cause why it has not violated subdivision 2"); Minn. R. Civ. P. 11.03 (requiring the same); *see also Chambers v. NASCO, Inc.*, 501 U.S. 32, 50, 111 S. Ct. 2123, 2136 (1991) (requiring due process in imposing sanction of attorney fees under inherent powers and in making requisite bad-faith finding); *Buscher v. Montag Dev., Inc.*, 770 N.W.2d 199, 210 (Minn. App. 2009) (stating due process "requires that the parties and attorneys receive notice of such potential sanctions and a hearing" (quotation omitted)).

The district court here awarded the attorney fees posttrial and did not provide "notice and a reasonable opportunity to respond" or allow appellants to "show cause" about why they did not violate Minn. Stat. § 549.211, subd. 2, or Minn. R. Civ. P. 11.02. It also did not make findings on how appellants' conduct violated Minn. Stat. § 549.211, subd. 2, or Minn. R. Civ. P. 11.02. Because the district court did not follow the procedures that

either Minn. Stat. § 549.211, subd. 4(b), or Minn. R. Civ. P. 11.03 requires, neither permits its award of attorney fees.

Respondents argue that their 2017 probate petition provided this notice because they asked for, among other relief, "[a]n order for [appellants] to pay for [respondents'] costs and attorney fees to the extent allowed by law." But the district court, not respondents, must make a finding of bad faith, provide notice, and hold a hearing before exercising its inherent authority to impose a sanction of attorney fees. *See Uselman*, 464 N.W.2d at 143. That did not occur here. Moreover, in their April 25, 2019 proposed order and the memorandum supporting it, respondents requested only that the *estate*, not appellants, pay their attorney fees. The district court abused its discretion by ordering appellants to pay respondents' and the estate's attorney fees.

VI. The district court did not clearly err by finding that the Wilson trailer is estate property.

Appellants argue that the district court erroneously relied on hearsay in a declaration to find that the Wilson Trailer is estate property. We disagree.

"We presume that the person whose name appears on a vehicle's certificate owns the vehicle, but a party may rebut this presumption with extrinsic evidence." *See Welle v. Prozinski*, 258 N.W.2d 912, 915-16 (Minn. 1977). Hearsay, which "is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted," is generally inadmissible. Minn. R. Evid. 801(c), 802. "The admissibility of evidence cannot be questioned for the first time on appeal." *State v. Taylor*, 133 N.W.2d 828, 832 (Minn. 1965).

The parties agreed during the November 2019 hearing that the district court could determine the issue of ownership of the Wilson trailer based on the declarations of James and Dale. The district court found Dale credible and that decedent purchased the trailer from James in 2004 but James never signed the title over. It cited Minn. Stat. § 168A.10, subd. 1 (2018), which places the duty of transferring title on the seller of a vehicle. It therefore determined that the Wilson trailer is estate property.

Respondents argue that appellants waived this argument when they agreed that the district court could make a finding about the trailer based on the declarations. Appellants contend that, because the parties presented the declarations at a non-evidentiary hearing, they did not need to make evidentiary objections, as the district court "should be perfectly capable of weighing the probative value of declarations containing hearsay testimony and/or lacking in foundation." But appellants cite to no legal authority that relieves them of the obligation to object to inadmissible materials to preserve the objection for appeal. By agreeing to have the district court consider both declarations, without objecting to their contents, appellants waived their right to challenge the admissibility of the contents on appeal. *See Thiele*, 425 N.W.2d at 582; *Taylor*, 133 N.W.2d at 832. The declarations support the district court's finding that decedent owned the trailer and that it is estate property.

Affirmed in part and reversed in part.