STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1123

In re: the Matter of the Le Duc Living Trust.

Filed April 21, 2025
Reversed
Johnson, Judge

Washington County District Court
File No. 82-CV-21-2949

Jeffrey M. Markowitz, Arthur, Chapman, Kettering, Smetak & Pikala, P.A., Minneapolis, Minnesota (for appellants Jennea Le Duc and Bruce Le Duc)

Sarah B. Sicheneder, J. Noble Simpson, Maser, Amundson & Boggio, P.A., Richfield, Minnesota (for respondents Margaret Nolde and Gary Le Duc)

Considered and decided by Johnson, Presiding Judge; Larkin, Judge; and Schmidt, Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

An elderly couple lent money to an adult grandchild. After one member of the elderly couple passed away, a family member filed a petition for a conservatorship for the other elderly person and simultaneously filed a petition to set aside the loan. The borrower moved to dismiss the set-aside petition, and the district court denied the motion. We conclude that the district court erred by denying the motion to dismiss the set-aside petition because the relevant statute provides that a set-aside petition may be filed only by a person

who has been appointed conservator. Therefore, we reverse the district court's denial of the motion to dismiss.

FACTS

Donald Le Duc and Mary Le Duc had three children: Gary Le Duc, Bruce Le Duc, and Margaret Nolde. Donald and Mary also had five grandchildren, including Jennea Le Duc, who is a child of Bruce. Donald and Mary's estate plan consisted of two wills and a trust, which they adopted in 2010 with the assistance of an attorney. Their wills provided that their assets would pass to the trust, of which Gary, Bruce, and Margaret are the only beneficiaries.

In 2017, Jennea was interested in buying a house. Bruce told Jennea that Donald and Mary might lend her money for the purchase so that she would not need to borrow from a commercial lender. Jennea met with Donald and Mary at Bruce's home and discussed possible terms, including amount, interest rate, and repayment period. They agreed on a loan of $200,000, with a 3.5-percent interest rate, and a 30-year repayment period, which resulted in a monthly payment of approximately $900. Jennea later testified that, one week later, Donald called her and said that he and Mary had decided that Jennea did not need to continue paying back the loan after they passed away.

Jennea suggested to Donald and Mary that the agreement be put in writing. Jennea prepared a written loan agreement, which was signed by Donald, Mary, and Jennea in July 2017. Jennea completed the purchase of a house and began making monthly payments.

In late 2018, Jennea became concerned that Margaret and Gary might challenge the loan. Jennea hired an attorney to rewrite the loan agreement, and Donald and Mary were

advised by a different attorney. On January 2, 2019, Donald, Mary, and Jennea signed an amended loan agreement, which states that, upon the death of both lenders, Jennea would "inherit the remaining principal and accrued interest under the note." On the same date, Donald and Mary executed codicils to their wills, which state that, if either of them died and was not survived by the other, they would give to Jennea "the remaining principal balance and accrued interest" of the loan.

In August 2019, Donald granted Margaret a power of attorney. In May 2020, Margaret and Gary learned about the loan while sorting through papers in Donald and Mary's home. At that time, neither Donald nor Mary remembered signing the loan agreement or meeting with an attorney to change their wills. Mary passed away in September 2020 at the age of 97.

On November 20, 2020, Margaret filed a petition for the appointment of a conservator for Donald. On the same date, she filed a petition to set aside the loan to Jennea pursuant to Minnesota Statutes section 524.5-417(e). In a cover letter addressed to the court, Margaret's attorney stated that the transaction that Margaret sought to set aside "occurred on or about January 2, 2019," asserted that the statute authorizing a set-aside petition "requires that an action be brought within two years," and requested "a hearing as soon as possible to avoid an inadvertent lapse of the conservator's authority to act."

In late December 2020, Jennea and Bruce separately filed objections to the petitions. In February 2021, Jennea moved to dismiss the set-aside petition on the ground that Margaret had not been appointed conservator and, thus, lacked standing to file it. In April 2021, the district court filed a 12-page order in which it denied Jennea's motion. The

district court acknowledged that Margaret had "not yet been . . . appointed Conservator" but nonetheless denied the motion. The district court reasoned that it "sits in equity in probate matters" and had concerns about the loan agreement. The district court also stated that Margaret "had an obligation to act based upon her designation as a power of attorney for Donald Le Duc in her fiduciary capacity to protect his assets and affairs." In addition, the district court stated that Jennea's and Bruce's conduct tolled the statutory two-year look-back period and that the two-year period may be extended due to fraudulent concealment.[1]

The district court conducted a five-day court trial on both petitions in November 2022 and May 2023. In December 2023, the district court filed an order in which it granted Margaret's conservatorship petition and appointed her conservator. On the same date, the district court filed a separate order in which it granted Margaret's set-aside petition and struck from the loan agreement the provision that would relieve Jennea of making payments on the loan after Donald's and Mary's deaths.

[1]In July 2021, Bruce commenced a separate action with respect to the trust established by Donald and Mary. He requested, among other things, an order clarifying who would serve as successor trustee and a full accounting. Two months later, Bruce's action concerning the trust was consolidated with Margaret's action concerning a conservatorship, and further proceedings were conducted using a dual caption and the case number of the trust action. The district court's electronic docketing system shows only the case title of the trust action. Because this court's electronic docketing system is linked to the district court's electronic docketing system, this opinion bears the case title of the trust action, even though we are reviewing an order filed in the conservatorship action before the commencement of the trust action.

In January 2024, Jennea and Bruce filed a joint motion for amended findings, judgment as a matter of law, or a new trial. Donald passed away in February 2024 at the age of 101. The district court denied the post-trial motion in June 2024.

Bruce and Jennea appeal from the orders filed in April 2021, December 2023, and June 2024. Margaret and Gary have appeared as respondents on appeal.

DECISION

Appellants make three arguments for relief: (1) the district court erred in its April 2021 order by denying Jennea's motion to dismiss Margaret's set-aside petition; (2) the district court erred in its second December 2023 order by finding that Donald was incapacitated and that Bruce and Jennea unduly influenced Donald and Mary when they signed the 2017 and 2019 loan agreements; and (3) the district court erred in its June 2024 order by denying their post-trial motion. Because we conclude that appellants' first argument has merit, we grant relief on that argument and do not reach their second and third arguments.

A.

As stated above, appellants' primary argument is that the district court erred by denying Jennea's motion to dismiss Margaret's set-aside petition on the ground that Margaret was not a conservator when she filed the set-aside petition and because the loan agreement that Margaret seeks to set aside was entered into more than two years before Margaret was appointed conservator.

The relevant statute provides, "If a person subject to conservatorship has made a financial transaction or gift or entered into a contract during the two-year period before

establishment of the conservatorship, *the conservator* may petition for court review of the transaction, gift, or contract." Minn. Stat. § 524.5-417(e) (2024) (emphasis added). "By its terms, section 524.5-417(e) applies when a conservator seeks to void a contract or transaction the conservatee entered into before the conservatorship started if that contract or transaction was entered into under duress or coercion." *In re Disciplinary Action Against Ludescher*, 1 N.W.3d 433, 449 (Minn. 2023).

On appeal, appellants renew the argument that Margaret did not have standing to file the set-aside petition when she filed it. They contend that a set-aside petition may be filed only by a person who has been appointed conservator of the person who previously made or entered into the transaction, gift, or contract that is the subject of the set-aside petition.

Appellants' argument is consistent with the plain language of the first sentence of the statute, which authorizes only one person to file a set-aside petition: the conservator. *See* Minn. Stat. § 524.5-417(e). The negative implication of that provision is that a person who has *not* been appointed conservator may *not* file a set-aside petition. Appellants' argument also is consistent with this court's opinion in *In re Conservatorship of Douglas*, No. A04-48, 2004 WL 1878876 (Minn. App. Aug. 24, 2004), *rev denied* (Minn. Oct. 19, 2004), in which we concluded that a person who was not the conservator of his father did not have standing to file a set-aside petition challenging transactions made by his father before the establishment of the conservatorship. *Id.* at *1-3; *see also* Minn. R. Civ. App. P. 136.01, subd. 1(c) (providing that nonprecedential opinions are "not binding authority" but "may be cited as persuasive authority").

This case is analogous to *Ortiz v. Gavenda*, 590 N.W.2d 119 (Minn. 1999), in which the plaintiff commenced a wrongful-death action without having been appointed trustee for that purpose, as required by statute. *Id.* at 120-21 (citing Minn. Stat. § 573.02 (1998)). After the three-year statute of limitations had lapsed, the plaintiff was appointed trustee and moved to amend the complaint to relate back to the date of the original complaint. *Id.* at 121. On appeal, the supreme court observed that the relation-back doctrine has been applied to common-law claims but that "the limitation provisions in a statutorily created cause of action are jurisdictional, requiring dismissal for failure to comply." *Id.* at 122. The supreme court explained that, "because the wrongful death statute itself made no exceptions to the time limit for bringing a wrongful death action, no exceptions could be made by construction." *Id.* (citing *Rugland v. Anderson*, 15 N.W. 676 (Minn. 1883)). The supreme court further explained that, "because appointment of a trustee was a condition precedent to bringing a wrongful death action under Minn. Stat. § 573.02, an action filed without it was a "'legal nullity.'" *Id.* at 122-23 (quoting *Regie de l'assurance Auto. du Quebec v. Jensen*, 399 N.W.2d 85 (Minn. 1987)).

The same is true in this case. Because the appointment of a conservator, and a petition filed by the conservator, are conditions precedent of a set-aside action under section 524.5-417(e), Margaret's failure to have satisfied those conditions at the time she filed the petition makes her set-aside action a legal nullity.

B.

Appellants also argue that the district court erred by asserting jurisdiction over Margaret's set-aside petition for other reasons.

First, appellants challenge the district court's reliance on equitable principles. Appellants argue that equity must follow the law. *See In re Dakota County*, 866 N.W.2d 905, 914 (Minn. 2015). That concept is, in essence, incorporated into the conservatorship statutes, which provide, "Unless displaced by the particular provisions of this article, the principles of law and equity supplement its provisions." Minn. Stat. § 524.5-103 (2024). The district court did not specifically identify the equitable principles on which it relied when it stated that it "sits in equity." But, in any event, equitable principles must yield to the statutory provision stating that only a conservator may file a set-aside petition. In the circumstances of this case, any equitable principles that might otherwise apply have been "displaced by the particular provisions of" section 524.5-417(e). *See id.*

Furthermore, the supreme court rejected a similar argument in *Ortiz*, in which the plaintiff-appellant argued that the statutory action commenced in violation of the wrongful-death statute should be recognized "on equitable grounds." 590 N.W.2d at 123. The supreme court reasoned that "no matter how compelling the circumstances for equitable intervention, equity cannot breathe life into a claim that has never been anything more than a nullity." *Id.* (quotation omitted). Likewise, Margaret's set-aside action cannot be revived by equitable principles.

Second, appellants challenge the district court's reliance on the fact that Margaret was Donald's attorney-in-fact from August 2019 until his death. Respondents argue that the authority granted to Margaret by Donald's power of attorney gave her standing to file a lawsuit. We do not doubt that Margaret could have authorized the commencement of a lawsuit in Donald's name based on her power of attorney. *See In re Conservatorship of*

Riebel, 625 N.W.2d 480, 482 (Minn. 2001) (stating that "power of attorney authorizes the attorney-in-fact to act on behalf of the principal as the client in an attorney-client relationship"). But Margaret did not do that. Her set-aside petition makes no reference to her power of attorney or her status as Donald's attorney-in-fact. Rather, the set-aside petition expressly refers to section 524.5-417(e).

Third, appellants challenge the district court's application of the doctrines of equitable tolling and fraudulent concealment. As an initial matter, equitable tolling is an equitable doctrine, which cannot be invoked because, as stated above, a set-aside claim is a statutory cause of action with strict jurisdictional requirements requiring dismissal upon a failure to comply. *See Ortiz*, 590 N.W.2d at 123. Furthermore, equitable tolling would not apply in the circumstances of this case because Margaret's failure to first be appointed conservator and then timely commence a set-aside action was not due to "circumstances beyond [her] control." *See Ochs v. Streater, Inc.*, 568 N.W.2d 858, 860 (Minn. App. 1997). It would not be equitable to toll the two-year look-back period because the requirements of section 524.5-417(e) were clear: only a conservator may file a set-aside petition. *See Regents of Univ. of Minn. v. Raygor*, 620 N.W.2d 680, 687 (Minn. 2001) (holding that equitable tolling was inapplicable because "it was clear the federal district court could not exercise jurisdiction over the supplemental MHRA claims"); *Carlson v. Independent Sch. Dist. No. 623*, 392 N.W.2d 216, 223-24 (Minn. 1986) (holding that equitable tolling was inapplicable because plaintiffs failed to file administrative charges before commencing lawsuits in district court).

The doctrine of fraudulent concealment also is an equitable doctrine. *Minnesota Laborers Health & Welfare Fund v. Granite Re, Inc.*, 844 N.W.2d 509, 513 (Minn. 2014). For that reason alone, fraudulent concealment cannot be the basis of the district court's jurisdiction over the parties' dispute. *See Ortiz*, 590 N.W.2d at 123. Furthermore, Margaret cannot show that Jennea fraudulently concealed the loan because Jeannea had no duty to disclose the loan to Margaret, with whom she did not have a fiduciary relationship. *See Richfield Bank & Trust Co. v. Sjogren*, 244 N.W.2d 648, 650 (Minn. 1976); *Driscoll v. Standard Hardware, Inc.*, 785 N.W.2d 805, 812 (Minn. App. 2010), *rev. denied* (Minn. Sept. 29, 2010). Margaret was not Donald's attorney-in-fact when Donald and Jennea entered into either the 2017 or the 2019 loan agreement, and Margaret has not cited any legal authority for the proposition that a third party has a duty of disclosure toward a principal's attorney-in-fact.

Thus, the district court erred by relying on equity in asserting jurisdiction over Margaret's set-aside petition.

In sum, the district court erred by denying Jennea's motion to dismiss Margaret's set-aside petition. The set-aside petition was a nullity when filed, and all subsequent orders on the set-aside petition shall have no legal effect.

Reversed.