COURT OF APPEALS
DECISION
DATED AND FILED

January 23, 2014

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2012AP2699 **Cir. Ct. No. 2011CV5451**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

IN RE THE ALICE J. WELCH REVOCABLE LIVING TRUST:

VICTORIA A. VANDENBROOK,

PETITIONER-RESPONDENT,

V.

STEVE WELCH,

INTERESTED PERSON,

JON D. WELCH,

INTERESTED PERSON-APPELLANT.

APPEAL from an order of the circuit court for Dane County: FRANK D. REMINGTON, Judge. *Affirmed.*

Before Blanchard, P.J., Sherman and Kloppenburg, JJ.

¶1 PER CURIAM. Jon Welch appeals an order allowing trustee Victoria Vandenbrook to distribute the first $5 million of the estate of a revocable living trust. We affirm.

¶2 In the circuit court, Vandenbrook moved for partial summary judgment allowing her to distribute the first $5 million of the estate. The trust document provides different distribution schemes, depending on whether a certain value exceeds $5 million. One disputed issue between the parties in the circuit court was, if that value exceeds $5 million, how should the first $5 million be distributed? The circuit court provided an answer to that question based on its interpretation of the trust document. However, the court also noted that if the distribution value of the estate will *not* exceed $5 million, then there are no further questions to be answered, and the court could go beyond partial summary judgment and issue a final order that would cover distribution of *all* the estate's assets. The court concluded that the distribution value would not exceed $5 million.

¶3 On appeal, Welch argues that the court erred in both its interpretation of the document and its valuation decision. However, Vandenbrook points out in response that if the circuit court was correct that the distribution value will not exceed $5 million, there is no need for us to consider whether the court correctly interpreted the trust document, because the parties do not dispute what the trust provides in that situation. Therefore, we start with the valuation issue.

¶4 Welch argues that the circuit court erred in its calculation of the estate's value. Welch argues, quoting the trust document, that the $5 million cut-off point for distributing the estate is the "adjusted gross estate as finally

determined for federal tax purposes." He argues that the court erred by removing certain assets and loans from the total estate value. He argues that under federal tax law those items are included in the estate's value, which will make the estate larger than the trial court concluded, and the estate will exceed $5 million.

¶5 Vandenbrook responds that Welch's argument is based on an incomplete reading of the relevant provision in the trust document about how the estate should be valued for distribution purposes. Vandenbrook agrees with the circuit court's reading. The circuit court concluded that the $5 million cut-off is not set *directly* at the final adjusted gross value of the estate as determined for tax purposes. Instead, the trust document contains provisions first disposing of the decedent's tangible assets, and then also forgiving loans that the decedent made to some of the beneficiaries. Then, for purposes of distributing the remainder of the estate, the distribution scheme refers to the first $5 million of value *above and beyond the value of the tangible property and loans*. In other words, the calculation to be made is adjusted gross value, minus the tangible property and forgiven loans. Thus, even if the adjusted gross value of the estate might be *over* $5 million, the value of the estate for distribution purposes might still be *under* $5 million.

¶6 We conclude that the circuit court's reading of the trust document is the only reasonable one. To support his argument that the $5 million cut-off in the distribution method is determined solely by using the adjusted gross estate for tax purposes, Welch simply pulls those quoted words out of context, without taking into account the remainder of the provision, including other parts of that very sentence. Welch has not tried to argue that the circuit court's reading of the document is unreasonable, or that the document is ambiguous because Welch's own reading is also reasonable. Although Welch had an opportunity to make such

arguments in his reply brief, he did not. Instead, his reply brief was entirely silent on the valuation issue.

¶7 Therefore, we conclude that the circuit court used the correct method to determine whether the distribution value of the estate would exceed $5 million. Welch does not argue that the court's mathematical calculation using that method was wrong.

¶8 In Vandenbrook's brief on appeal, she directed our attention to a new document from the Internal Revenue Service. In our order of November 15, 2013, we required Welch to inform us whether he believes the new document would alter the circuit court's calculation of whether the estate contains sufficient assets to reach the $5 million cut-off provided in the trust document. As we discussed in that order, although Vandenbrook framed the issue as mootness, she was essentially submitting that document as additional evidence in support of the circuit court's possibly premature determination of the estate value that was made using only the estate's filed tax return, rather than the final document after IRS review. Welch has responded that he does not believe the IRS document would mathematically change the court's answer. Therefore, for the reasons discussed in our November 15 order, we conclude that a remand is not necessary for the circuit court to consider that document.

¶9 Accordingly, we are satisfied that the court's conclusion that the distribution value of the estate would be under $5 million is correct. As we said above, Welch does not dispute that this conclusion makes it unnecessary for us to consider how to interpret the trust document when the distribution value is *over* $5 million. That situation does not exist.

¶10 Welch also argues that the circuit court erred by deciding the valuation issue and issuing a final order even though Vandenbrook moved only for partial summary judgment. He argues that in doing so the court improperly deprived him of the opportunity to introduce evidence. However, Welch does not identify any specific factual dispute on which evidence would be required. He asserts that there was a dispute of material fact "about the total value of the Estate." However, Welch's argument about the distribution value of the estate appears to be based only on disagreement with the court's conclusion as to the *method* of determining that value, as we discussed above. That question is a legal one that is answered from the content of the trust document. No evidence appears to be required, and Welch has not explained what evidence he would submit on that issue. Therefore, we conclude that the court did not improperly deny Welch the opportunity to present evidence.

¶11 Welch also argues that the court's action deprived him of notice and a chance to argue the valuation issue. However, we note that Welch presented his argument about the valuation issue in a letter asking for a briefing schedule on that issue. The court construed the letter as a motion for reconsideration, and the court provided a substantive response denying the motion. Welch does not explain how this letter and reconsideration were inadequate, and therefore they appear to resolve any concern as to notice and opportunity to argue.

¶12 Vandenbrook moves for a finding that Welch's appeal is frivolous under WIS. STAT. RULE 809.25(3). We deny the motion.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.