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**DISTRICT III**

February 24, 2026

To:

Hon. Melissia R. Mogen  
Circuit Court Judge  
Electronic Notice

Ryan M. Benson  
Electronic Notice

Jacqueline Baasch  
Clerk of Circuit Court  
Burnett County Courthouse  
Electronic Notice

Patrick James Boley  
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

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2025AP382

John E. Korich v. George M. Korich (L. C. No. 2024PR63)

Before Stark, P.J., Hruz, and Gill, JJ.

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

John Korich appeals from an order that dismissed a petition to appoint a special administrator, under WIS. STAT. § 867.07 (2023-24),<sup>1</sup> to conserve property in Wisconsin owned by his mother, Lucille, at the time of her death and to subpoena testimony and estate planning records from Lucille's former attorney. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We affirm with respect to the circuit court's denial of the petition to appoint a special administrator for the conservation of property and reverse with respect to the order

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2023-24 version.

denying the appointment of a special administrator for the limited purpose of obtaining testimony or files from Benson related to Lucille's estate planning.

As background, Lucille executed a will in Florida on May 4, 2022, which left three parcels of real estate located in Burnett County, Wisconsin, to her three sons, George, Robert, and John.<sup>2</sup> On June 8, 2022, Lucille executed a Transfer on Death (TOD) Deed in Wisconsin, pursuant to WIS. STAT. § 705.15, to transfer the Burnett County property to George, Robert, and John upon her death. On May 30, 2023, Lucille executed a superseding Designation of TOD Beneficiary in Wisconsin, pursuant to § 705.15, to transfer the Burnett County property solely to George upon her death. Both Wisconsin TOD documents were drafted by Attorney Ryan Benson. On March 14, 2024, Lucille executed a second will in Florida that likewise left the Burnett County property solely to George. The second will also contained an express provision disinheriting both John and Robert.

Lucille passed away on November 9, 2024, while domiciled in Florida. John filed a petition to appoint a special administrator in Wisconsin to conserve the Burnett County property, while issues of mistake of fact, fraud, lack of capacity, and/or undue influence could be litigated in Florida. John subsequently amended the petition to further request that the special administrator be empowered to subpoena testimony and estate planning files from Benson, pursuant to WIS. STAT. § 905.03(4)(b).

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<sup>2</sup> Lucille also had two surviving daughters and a grandchild by a deceased daughter who are not affected by the provisions at issue in this litigation.

George, who was then represented by Benson, objected to the petition and amended petition. George asserted that there was no property in Wisconsin in Lucille's name that could be subject to a special administration because George had already filed a Termination of Decedent's Interest with respect to the Burnett County property. He further pointed out that WIS. STAT. § 705.15(8) sets forth a procedure, outside of the probate process, to challenge a Wisconsin TOD transfer of property within 120 days of the deceased owner's death. Finally, George alleged that, even if a special administrator were required, John was not qualified under WIS. STAT. § 856.23(1)(d) and (e) to act in that capacity because John is not a resident of Wisconsin and has a recent financial-related criminal conviction in Minnesota.

While this special administrator petition was pending (and within the 120-day timeframe set forth in WIS. STAT. § 705.15(8)), John filed a declaratory judgment action in Burnett County seeking to challenge the 2023 Designation of TOD Beneficiary as void for mistake of fact, fraud, lack of capacity, and/or undue influence. John filed a lis pendens on the Burnett County property in conjunction with the declaratory judgment action. John notified the circuit court at a hearing on the petition that there was not yet—and might never be—a probate proceeding with a personal representative initiated in Florida because Lucille had arranged for nontestamentary transfers of all of her assets. John also proposed his brother Robert as the special administrator.

Attorney Benson informed the circuit court at the hearing that he had no objection to having the court appoint John's brother Robert as a special administrator for the limited purpose of obtaining any of Lucille's estate planning files in his possession.<sup>3</sup> His only concern was that

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<sup>3</sup> Benson did not clarify whether he was speaking solely on his own behalf, in his capacity as Lucille's former attorney, or also on behalf of his current client, George.

he not be required to violate any ethical obligations by turning over confidential materials to an unauthorized person.

The circuit court denied the special administration petition because it found that there were no assets in Wisconsin subject to probate, and the “proper venue and jurisdiction” to litigate “this matter” would be in Florida. While we agree that Florida would appear to be the most appropriate place to litigate a challenge to Lucille’s second will,<sup>4</sup> we disagree that Wisconsin would lack jurisdiction to hear a challenge to the 2023 Designation of TOD Beneficiary, which was recorded in Wisconsin and involves real property in Wisconsin. Still, any such challenge to a nontestamentary transfer lies outside of the probate process and is, therefore, outside the scope of WIS. STAT. § 867.07.

Quite simply, a special administrator cannot be appointed for the purpose of “conserving” estate assets that were never in an estate to begin with. Rather, the lis pendens already filed in conjunction with the declaratory judgment action serves the asserted purpose of limiting the ability to dispose of the Burnett County property while litigation over the nontestamentary transfer remains pending. We therefore affirm that portion of the circuit court’s decision that denied John’s request to appoint a special administrator to conserve the Burnett County property pending resolution of separate litigation over its transfer.

As to appointing a special administrator for the limited purpose of subpoenaing testimony and case files from Benson regarding Lucille’s estate plans, the circuit court did not adequately

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<sup>4</sup> We note that it is speculative that any such probate litigation will occur, given that the will apparently will not dispose of any significant property unless one or more nontestamentary transfers fail.

explain in its written order why it chose to deny that request. We could infer from a “hint-hint-hint” comment the court made at the hearing that the court believed John should have filed a separate petition seeking only that relief. The court cited no authority, however, that would bar John from seeking multiple or alternate forms of relief in the same petition, and his being entitled to all, some, or none of that relief.

There is no dispute between the parties that the appointment of a special administrator for the limited purpose of obtaining testimony or files from Benson related to Lucille’s estate planning would be warranted under WIS. STAT. § 867.07(1). We agree and conclude that the circuit court erred by denying that form of requested relief. Accordingly, we reverse that portion of the court’s order denying the appointment of a special administrator for the limited purpose of obtaining testimony or files from Benson related to Lucille’s estate planning. We remand with directions that the court appoint a special administrator for that purpose—whether that administrator be John, Robert, or someone else.

Upon the foregoing,

IT IS ORDERED that the order denying the petition to appoint a special administrator is summarily affirmed in part and reversed in part, and the matter is remanded to the circuit court with directions. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*