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DISTRICT IV

December 19, 2024

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

2024AP1057

In re the Estate of Carl W. Klein: Theresa Kohlmeier v.
Rosemary Christian (L.C. # 2023PR139)

Before Graham, Nashold, and Taylor, 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).

Theresa Kohlmeyer, the personal representative nominated in a will executed by decedent Carl Klein, appeals a circuit court order that denied a petition for probate proceedings. No respondents' brief has been filed. We previously ordered this appeal submitted for review based solely upon Kohlmeyer's brief and the record. We now conclude that the appeal may be decided based solely upon Kohlmeyer's brief and the record. Further, based on our review of the brief and the record, we conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1) (2021-22).¹ We reverse and remand for further proceedings consistent with this opinion.

Klein executed the will in question on July 20, 2021. According to the will, his estate was to be left to his sister Rosemary Christian, except for a forty-acre parcel of land that was to be left to his nephew Charles Christian. The only two witnesses who signed the will were Charles Christian and Charles Christian's wife.

Upon Klein's death, Kohlmeyer filed an application for informal administration of his estate and sought to have the will admitted to probate for that purpose. The register in probate filed a petition for formal proceedings. The circuit court issued an order setting a date for a hearing on the petition. No interested person other than Kohlmeyer appeared at the hearing or objected to the will. During the hearing, the court concluded that the will was invalid under WIS. STAT. § 853.07 and could not be admitted to probate because the only two witnesses who signed the will are interested witnesses. Based on this conclusion, the court declined to approve Kohlmeyer's application for informal administration and denied the pending petition for formal administration.

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

Kohlmeyer argues that the circuit court interpreted WIS. STAT. § 853.07 incorrectly to require the invalidation of a will in its entirety whenever the only two witnesses who sign the will are interested witnesses. The interpretation of a statute presents a question of law subject to de novo review. *DiBenedetto v. Jaskolski*, 2003 WI App 70, ¶24, 261 Wis. 2d 723, 661 N.W.2d 869. We agree with Kohlmeyer that the court interpreted the statute incorrectly.

WISCONSIN STAT. § 853.07 provides as follows:

(1) Any person who, at the time of execution of the will, would be competent to testify as a witness in court to the facts relating to execution may act as a witness to the will. Subsequent incompetency of a witness is not a ground for denial of probate if the execution of the will is otherwise satisfactorily proved.

(2)(a) Subject to pars. (b) and (c), a will is not invalidated because it is signed by an interested witness.

(b) Except as provided in par. (c), any beneficial provisions of the will for a witness or the spouse of a witness are invalid to the extent that the aggregate value of those provisions exceeds what the witness or spouse would have received had the testator died intestate. Valuation is to be made as of testator's death.

(c) Paragraph (b) does not apply if any of the following applies:

1. The will is also signed by 2 disinterested witnesses.
2. There is sufficient evidence that the testator intended the full transfer to take effect.

Nothing in the statute requires that a will be invalidated solely because the only two witnesses who signed the will are interested witnesses. On the contrary, the general rule under the statute is that “a will is *not* invalidated because it is signed by an interested witness.” WIS. STAT.

§ 853.07(2)(a) (emphasis added).² Although this general rule is “[s]ubject to” exceptions for “beneficial provisions of the will for a witness or the spouse of a witness,” these exceptions govern the validity of those individual beneficial provisions, not the validity of the will as a whole. *See* § 853.07(2)(b), (c).

Here, the circuit court incorrectly interpreted these statutory exceptions pertaining to the validity of individual provisions as requiring that Klein’s will as a whole be invalidated. And, in doing so, the court erroneously declined to admit the will to probate on the ground that the only two witnesses who signed the will are interested witnesses. Because the court’s order is based on this incorrect interpretation of the statute, we conclude that the order must be reversed. We remand for further proceedings consistent with this opinion.

Therefore,

IT IS ORDERED that the circuit court’s order is summarily reversed and that the cause is remanded for further proceedings consistent with this opinion.

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

Samuel A. Christensen
Clerk of Court of Appeals

² The statute further provides that “[a]ny person” who is competent at the time to testify in court regarding the facts of the will’s execution may act as a witness to the will. WIS. STAT. § 853.07(1) (emphasis added).