

STATE OF NORTH DAKOTA
Supreme Court Case No. 20210029
Stark County Case No. 2019-PR-00030

Christine Binstock, Personal Representative of the
Estate of Janel Finch, deceased,

Petitioner and Appellee,

v.

Mathew Finch,

Respondent and Appellant

In the Matter of the Estate of Janel Finch, deceased.

**BRIEF OF PETITIONER AND APPELLEE, CHRISTINE BINSTOCK,
PERSONAL REPRESENTATIVE OF THE ESTATE OF JANEL FINCH,
DECEASED**

RESPONSE TO APPEAL FROM ORDER ON COMPETING PETITIONS TO
REMOVE CO-PERSONAL REPRESENTATIVES ENTERED BY THE SOUTHWEST
JUDICIAL DISTRICT, COUNTY OF STARK, STATE OF NORTH DAKOTA, THE
HONORABLE DANN E. GREENWOOD, ON DECEMBER 2ND, 2020.

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JURISDICTIONAL STATEMENT

[¶ 1] The district court had jurisdiction to hear and try this case under Article VI, Section 8 of the North Dakota Constitution and Section 30.1-02-02 of the North Dakota Century Code. This Court has jurisdiction to hear this appeal under Article VI, section 6, of the North Dakota Constitution and section 28-27-01 of the North Dakota Century Code.

STATEMENT OF THE ISSUES

[¶ 2] The District Court did not err when it removed Mathew Finch as Co-Personal Representative and installed Christine Binstock as the sole Personal Representative.

[¶ 3] The District Court did not err when it denied Mathew Finch's request for attorney fees.

STATEMENT OF THE CASE

[¶ 4] This case comes to the North Dakota Supreme Court on appeal from Stark County in the Southwest Judicial District. Janel Finch ("Janel") passed away on January 17, 2019, and was survived by two adult children, Christine Binstock ("Christine") and Mathew Finch ("Mathew"). Janel and Christine were very close throughout Christine's life. Meanwhile, Janel and Mathew had a continuously conflicted relationship. In January 2016, Janel was diagnosed with cancer. As a result, in June of 2016, Janel transferred various real and personal property interests to Christine.

[¶ 5] After Janel's passing, Christine and Mathew were appointed as Co-Personal Representatives. Because of the June 2016 transfers, there was relatively minimal property in Janel's estate for the Co-Personal Representative's to administer. However, Mathew refused to perform his duties as Co-Personal Representative and assist Christine in

administering the Estate. Rather, Mathew insisted that Janel had either lacked capacity to make the June 2016 transactions or was unduly influenced by Christine. However, no meritorious evidence of either lack of capacity or undue influence exist.

[¶ 6] Nonetheless, over the next 18 months, Mathew conducted an extensive “fishing” expedition in an attempt to drum up such evidence. During this time, he refused to do anything productive with the Estate. After indulging Mathew’s investigation for 18 months, Christine as Co-Personal Representative Petitioned the District Court to remove Mathew so that the Estate could finally be fully administered and brought to a close. Mathew then brought his own Petition for removal against Christine. After extensive response briefs, affidavits, and exhibits, a hearing for oral argument was held. The District Court ultimately agreed that there was insufficient evidence of lack of capacity or undue influence to warrant Mathew’s extensive investigation. The District Court also agreed that Mathew had failed to perform his duties as Co-Personal Representative. As a result, the District Court removed Mathew as Co-Personal Representative and installed Christine as the sole Personal Representative. Mathew appealed.

STATEMENT OF THE FACTS

[¶ 7] Decedent, Janel Finch (“Janel”), passed away on January 17, 2019, at the age of 62 years old. See Appendix of Appellants (“App.”), p. 6. Janel was survived by two adult children, Christine Binstock (“Christine”), and Mathew Finch (“Mathew”). Id.

[¶ 8] Janel left a valid Last Will and Testament dated October 30, 2001 (“Last Will”), which was admitted to probate. Id., p. 7. At the time Janel signed her Last Will, Christine and Mathew were still minor children. Id., pp. 10-15. As a result, Janel’s Last Will created a minor’s trust for Christine and Mathew’s benefit. Id. Janel passed away almost 18 years

after signing her Last Will. Id., p. 6. Janel’s children are no longer minors, and the minor’s trust was inapplicable.

[¶ 9] Janel’s Last Will nominated Catherine Newby to be her Personal Representative. Id., pp. 10-15. Catherine Newby predeceased Janel, and was therefore unable to fulfill the nomination. Leon Vetter (“Leon”), a family friend and Janel’s financial advisor, was nominated as the alternate Personal Representative. Id. Due to his role as Janel’s financial advisor, Leon believed a conflict existed. As a result, he waived his appointment as Personal Representative. Id., p. 9.

[¶ 10] With the two nominated Personal Representatives being unable to fulfill the role, the Personal Representative duties fell to Christine and Mathew who were initially appointed as Co-Personal Representatives on April 3, 2019. Id., p. 18.

[¶ 11] In January of 2016, Janel was diagnosed with lung cancer. Id., pp. 28-31. Despite Janel’s diagnosis, Janel continued to work as a nurse at CHI St. Alexius in Dickinson until her retirement in October of 2018. Id. Janel never lost the capacity to perform her duties as a nurse or make decisions in regards to her property or its disposition. Id., p. 105. Rather, Janel did what would be expected of someone who had been diagnosed with cancer – she began getting her affairs in order. Id., pp. 104-108. To that end, in June of 2016, Janel signed a Life Estate Quit Claim Deed which transferred her house in Dickinson to Christine and reserved a life estate. Id., pp.34-35. At the same time, Janel signed a Bill of Sale transferring three items to personal property to Christine: (a) a 1975 Wicker Mobile Home – VIN # M2662, which is a mobile home located on a leased lot at Mossett Bay on Lake Sakakawea; (b) a 2008 Chevrolet K 1500 Silverado Pickup; and (c) a 19.2-foot 2000

Crestliner – Hull. Id., pp. 32-33. Christine was not aware of these transfers until after Janel had signed the Life Estate Quit Claim Deed and the Bill of Sale. Id., p. 29.

[¶ 12] Following Janel’s gifts to Christine by way of the Life Estate Quit Claim Deed and the Bill of Sale, there were minimal assets left in Janel’s Estate that were subject to probate. Id., pp. 28-31. Rather, there were a few relatively minor items to clean up through the Estate. Id. For example, there were some non-producing mineral interests that needed to be transferred equally to Christine and Mathew. Id. Additionally, Janel and Christine did not realize they needed to get a new title for the 1975 Wicker Mobile Home at the North Dakota Department of Motor Vehicles. Id. As a result, because Janel was no longer alive to sign the DMV documents to obtain the new title, that responsibility fell to the Estate. Id. Finally, Janel owned various retirement accounts, investment accounts, and life insurances. Id. Prior to her death, she changed the beneficiary arrangement on some of these accounts to a 70/30 split, with 70% of the benefit going to Christine and 30% of the benefit going to Mathew. Id. These accounts, however, passed outside of the Estate.

[¶ 13] Mathew only began to discover information about the Life Estate Deed, Bill of Sale, and change in beneficiary designations when he started badgering Janel, Christine, and Leon while Janel was on her death bed in early 2019. Id. Mathew became very upset and belligerent as he discovered additional information and left Janel’s bedside right. Id., pp. 28-31, 85-103. Janel passed away shortly after. Id. This action was a mere culmination of the trying and tumultuous relationship between Janel and Mathew for essentially all of Mathew’s adult life. Id., pp. 123-140.

[¶ 14] By Mathew’s own admission, Janel and Mathew had an adverse relationship for many years. Id. This relationship seemed to get worse following Janel’s 2016 diagnosis.

Id. As a result, the estate planning actions Janel took in June of 2016 were not surprising to anyone who knew about Janel and Mathew's troubled relationship.

[¶ 15] Following Janel's passing and Christine and Mathew's subsequent appointment as Co-Personal Representatives, Christine set out to efficiently administer Janel's Estate. Id., pp. 28-31. As already mentioned, there was relatively minimal work to be done. Id. Most of Janel's assets were either already gifted away (Bill of Sale) or transferred with minimal effort upon death (Life Estate Quit Claim Deed and account beneficiary arrangements). Id. The three main things that remained centered around opening an estate bank account to pay final expenses, transferring her non-producing mineral interests, and selling Janel's vehicle. Id.

[¶ 16] Despite Mathew's appointment as Co-Personal Representative, he refused to help Christine administer Janel's Estate. Id. 85-103. Christine attempted to set up an Estate bank account in order to pay Janel's final expenses – Mathew refused to sign the paperwork as Co-Personal Representative. Id. Christine then asked if Mathew would help with the sale of Janel's vehicle. Id. After some time, that task was too much for Mathew and he relinquished that task to Christine. Id. Christine promptly sold the vehicle and tried to deposit the funds into the Estate account, but was unable because Mathew would not cooperate in opening up the Estate account. Id.

[¶ 17] Eventually, in September of 2019, Mathew hired new counsel to represent him and they began seeking information about Janel's account, her beneficiary arrangements, her medical records, and the June 2016 Life Estate Deed and Bill of Sale. Id., pp. 58-76. Christine was told that Mathew would not do anything until he had a full investigation into

all of those matters because he suspected that Janel either lacked capacity or was subject to undue influence. Id.

[¶ 18] Christine knew that there was no meritorious evidence that would point to either Janel’s lack of capacity or undue influence. Id., pp. 28-31, 85-103. Janel continued to work as a nurse over two years after she signed the Life Estate Deed and Bill of Sale. Id. It is not logical to think that Janel had capacity to work as a nurse but did not have capacity to dispose of her own property in contemplation of death. Id. Additionally, Christine did not even know about the Life Estate Deed or Bill of Sale until after Janel had signed. Id., pp.28-31. So, any argument that Christine unduly influenced Janel lacks merit. Nonetheless, Christine allowed Mathew to do whatever sort of investigation he thought was necessary. Id. For over a year, Christine appeased Mathew’s “investigation”. Id. Eventually, Christine had enough and tried to move the Estate forward, initially with Mathew’s cooperation. Id., pp.28-31, 85-103. However, it soon became clear that Mathew would most likely never cooperate, no matter how much time he was given. Id. So, Christine decided the only route to take was to seek to have Mathew removed as Co-Personal Representative. Id. As a result, Christine as Co-Personal Representative of the Estate of Janel Finch filed a Petition to Remove Mathew as Co-Personal Representative on September 2, 2020, nearly 17 months after they were first appointed as Co-Personal Representatives. Id., pp. 23-27.

[¶ 19] After a series of response briefs, affidavits, and Mathew’s own Petition to remove Christine as Co-Personal Representative, a hearing was held in Stark County District Court on November 13, 2020. By the parties’ stipulation, the District Court only heard oral argument at the hearing. Following the November 13, 2020 hearing, the District Court entered its Order on Competing Petition to Remove Co-Personal Representative wherein

the Court ultimately removed Mathew and installed Christine as the sole Personal Representative of the Estate of Janel Finch. Mathew subsequently appealed. Id., pp. 149-158.

LAW AND ARGUMENT

[¶ 20] North Dakota law gives District Courts wide discretion in removing a personal representative. Section 30.1-17-11(2) of the North Dakota Century Code provides that a personal representative may be removed for cause. N.D.C.C. § 30.1-17-11(2). This is reinforced repeatedly by the North Dakota Supreme Court, with District Court cases only being reversed when it finds a District Court abused its discretion by acting arbitrarily, unreasonably, or unconscionably, or when it misapplies or misinterprets the law. In Re Estate of Bartelson, 2013 ND 129, ¶ 15, 833 N.W.2d 522. The District Court found that Mathew failed to perform his duties as Co-Personal Representative. Therefore, this Court should hold that the District Court did not abuse its discretion in removing Mathew as Co-Personal Representative. Moreover, this Court should hold that the District Court did not abuse its discretion when it appointed Christine as the sole Personal Representative.

[¶ 21] Finally, the North Dakota Century Code also provides that a Personal Representative's attorney fees may be awarded if the Personal Representative has acted in good faith in defending or prosecuting an action and his actions have benefitted the Estate. N.D.C.C. § 30.1-18-20, In re Estate of Peterson, 1997 ND 48, ¶ 12, 561 N.S.2d 618. This Court should affirm the District Court's decision and hold that Mathew's actions as Personal Representative were not pursued in good faith, but rather were self-serving, malicious actions, that resulted in no benefit to the Estate.

I. The District Court did not abuse its discretion when it removed Mathew as Co-Personal Representative and appointed Christine as the sole Personal Representative.

[¶ 22] Section 30.1-18-03, N.D.C.C. provides, “A personal representative is under a duty to settle and distribute the estate of the decedent in accordance with the terms of any probated and effective will and this title, and as expeditiously and efficiently as is consistent with the best interests of the estate.” Section 30.1-17-11(2), N.D.C.C., governs removal of a personal representative for cause. It provides in relevant part:

Cause for removal exists when removal would be in the best interests of the estate, or if it is shown that a personal representative . . . has become incapable of discharging the duties of the office, or has mismanaged the estate or failed to perform any duty pertaining to the office.

N.D.C.C. § 30.1-17-11(2).

[¶ 23] “The district court has discretion in deciding whether to remove a personal representative for cause, and the court’s decision will not be reversed on appeal unless the court abused its discretion. In re Estate of Hass, 2002 ND 82, ¶ 12, 643 N.W.2d 713. A court abuses its discretion ‘when it acts in an arbitrary, unreasonable, or unconscionable manner, or when it misinterprets or misapplies the law.’ In re Estate of Cashmore, 2010 ND 159, ¶ 21, 787 N.W.2d 261.” In re Estate of Bartelson, 2013 ND 129, ¶ 15, 833 N.W.2d 522.

[¶ 24] The facts of this case show that Christine had performed her duties as Co-Personal Representative, that Mathew had not performed his duties as Co-Personal Representative, and that there is no meritorious evidence to point to either undue influence or lack of capacity. Mathew admits through affidavit and argument that he refused to open the Estate bank account, he refused to sign any deed to convey undisputed non-producing mineral

interests, and he refused to pay any expenses. By his own admissions alone, the District Court had sufficient cause to remove Mathew under N.D.C.C. § 30.1-17-11(2). However, if the court then considers that Mathew’s “fishing” expedition covered the span of 18 months, uncovered no meritorious evidence, and was only conducted a last-ditch effort to benefit his own interests, this Court should see that the District Court acted properly in removing Mathew as Co-Personal Representative.

[¶ 25] The present case is similar to the case of Jarmin v. Shriners Hosp. For Crippled Children, 450 N.W. 2d 750 (N.D. 1990). In Jarmin, the personal representative was removed pursuant to N.D.C.C. § 30.1-17-11. Here, the Estate of Doris D. Corrie was to be wholly distributed to two charities. Id. at 751. The personal representative, acting under his authority as personal representative, withdrew funds from an account that should have been ultimately distributed to the two charities. Id. The funds were withdrawn for the personal representative’s own personal benefit. Id. When the Personal Representative’s actions were challenged, he attempted to defend his actions for his own personal benefit by using Estate funds. The lower court held that it was in the best interests of the estate to remove the personal representative because “his irrational actions in dealing with the estate funds gave the appearance that [the personal representative] was furthering his own interest at the expense of the estate and its heirs.” Id. at 753.

[¶ 26] The case at hand, likewise deals with the irrational actions of a personal representative attempting to further his own interest at the expense of the estate. Mathew’s actions are irrational because his claims of undue influence and lack of capacity have no merit. Moreover, Mathew’s actions can only serve to benefit himself. Finally, Mathew’s seemingly endless investigation would be an unnecessary and significant expense to the

estate. Therefore, this Court should also affirm the lower court's decision to remove Mathew as personal representative.

[¶ 27] Mathew argues that he had good reason to refuse to sign to open the estate bank account because he was afraid Christine would then start doing things on her own with the estate account. This argument is irrational and is contrary to North Dakota law. Section 30.1-18-17, N.D.C.C., provides, “[i]f two or more persons are appointed corepresentatives and unless the will provides otherwise, the concurrence of all is required on all acts connected with the administration and distribution of the estate.” N.D.C.C. § 30.1-18-17. Nonetheless, Mathew admits that he refused to sign the documents to open the Estate bank account, transfer the minerals, or pay expenses. These admissions alone are sufficient cause for the District Court to remove Mathew as Co-Personal Representative under N.D.C.C. § 30.1-17-11(2). As a result, this Court should affirm the District Court's decision and hold that the District Court did not abuse its discretion by removing Mathew as Co-Personal Representative.

II. The District Court properly denied Mathew's request for attorney's fees.

[¶ 28] The District Court did not err when it denied Mathew's request for attorney's fees. None of the work that Mathew has done under the guise of being Co-Personal Representative has benefitted the Estate. Section 30.1-18-20, N.D.C.C., provides, “If any personal representative . . . defends or prosecutes any proceeding in good faith, whether successful or not, the personal representative . . . is entitled to receive from the estate necessary expenses and disbursements, including reasonable attorney's fees incurred.” N.D.C.C. § 30.1-18-20. “For payment of attorney fees from the estate under N.D.C.C. § 30.1-18-20, the personal representative's conduct must have been in good faith, free from

fraudulent intent, and for the benefit of the estate.” In re Estate of Peterson, 1997 ND 48, ¶ 12, 561 N.W. 2d 618, (citing Matter of Estate of Honerud, 326 N.W.2d 95, 97 (N.D. 1982)). A personal representative’s attorney’s fees are “frequently disallowed if the legal services are performed ‘primarily for the personal interest of the personal representative and not for the benefit of the estate as a whole.’” In re Oliver, 540 N.W.2d 630, 633 (N.D. 1995) (quoting Matter of Estate of Rohrich, 496 N.W.2d 566, 571 (N.D. 1993)).

[¶ 29] Mathew’s conduct as personal representative was not in good faith. It was self-serving, and maliciously motivated to harm Christine. Additionally, Mathew’s conduct was not done for the benefit of the Estate. Rather, Mathew’s conduct has been for the sole purpose of benefitting Mathew individually, and attempting to run up charges against the Estate.

[¶ 30] In In re Estate of Honerud, 326 N.W.2d 95, this Court took up the question of whether a personal representative acted in good faith which entitled him to attorney’s fees. There, the Court stated the personal representative “initiated the original proceeding in the hope of personal gain and without any intent to benefit the estate.” As a result, the Supreme Court affirmed the lower court’s denial of attorney’s fees.

[¶ 31] The same rationale should be applied here. Mathew’s conduct throughout these entire proceedings has solely been for his own benefit and in the hope of personal gain. The Estate has not benefitted from his conduct, and therefore, the Estate should not be responsible for paying for his conduct.

[¶ 32] Mathew allegedly investigated his unfounded theories of undue influence and lack of capacity for nearly 18 months. While currently unknown, the costs of such investigation are most likely significant. Mathew’s year long investigation has resulted in no meritorious

evidence to support his allegations. Moreover, he has yet to even make an undue influence or lack of capacity claim against Christine or the Estate. Finally, even if such evidence did exist, the claims would be most appropriately brought outside of the Estate, considering the transactions Mathew is upset with happened over two years prior to Janel's death.

[¶ 33] A Personal Representative is charged with administering a decedent's Estate by ensuring that the property owned by the decedent at the time of the decedent's death is transferred to the intended heirs or devisees pursuant either to a decedent's last will or applicable statutes. A personal representative does not properly administer an estate by undergoing an expensive and extensive "fishing" expedition in an attempt to undo transactions from two and a half years prior to the decedent's death and at the expense of the estate. This attempted administration becomes even worse when the only party who could possibly benefit from it, is Mathew.

[¶ 34] After over 18 months of inaction, it eventually became clear that this Estate was not going to move forward with Mathew as Co-Person Representative. As a result, considering the best interests of the Estate, Mathew had to be removed as Co-Personal Representative. Mathew's actions as Co-Personal Representative have in no way benefitted the Estate. Rather, his actions have and continue to significantly cost the Estate. On the other hand, Mathew, individually, is the only person who could possibly benefit from his actions. Therefore, it would be inappropriate for the Estate to be forced to pay Mathew's attorney's fees. The District Court did not abuse its discretion when it agreed that it would be inappropriate for the Estate to pay Mathew's attorney's fees. Likewise, this Court should affirm.

CONCLUSION

[¶ 35] For the reasons stated above, this Court should affirm the District Court’s decision to remove Mathew as Co-Personal Representative and install Christine as the sole Personal Representative. This Court should also affirm the District Court’s decision to deny Mathew’s request for attorney’s fees.

Dated this 23rd day of June, 2021.

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v.

Mathew Finch,

Respondent and Appellant

In the Matter of the Estate of Janel Finch, deceased.

CERTIFICATE OF SERVICE

[¶ 1] I, Jordan L. Selinger, certify that I served the following document(s) as indicated below:

- 1. Brief of Petitioner and Appellee, Christine Binstock as Personal Representative of the Estate of Janel Finch, deceased;**
- 2. Certificate of Service.**

On June 23, 2021, by sending a true and correct copy thereof by electronic means only to the following email address which, to the best of my knowledge, is the actual email address of the person intended to be served, to wit:

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Dated this 23rd day of June, 2021.

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CERTIFICATE OF SERVICE

[¶ 1] I, Jordan L. Selinger, certify that I served the following corrected document(s) as indicated below:

- 1. Brief of Petitioner and Appellee, Christine Binstock as Personal Representative of the Estate of Janel Finch, deceased;**
- 2. Certificate of Service.**

On June 24, 2021, by sending a true and correct copy thereof by electronic means only to the following email address which, to the best of my knowledge, is the actual email address of the person intended to be served, to wit:

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Dated this 24th day of June, 2021.

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