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STATE OF NORTH DAKOTA

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STATE OF NORTH DAKOTA

ESTATE OF JOHN T. GLEESON

APPEAL FROM THE DISTRICT COURT JUDGMENT
SOUTH CENTRAL JUDICIAL DISTRICT
BURLEIGH COUNTY CIVIL NO. 92-C-1121
THE HONORABLE THOMAS J. SCHNEIDER, PRESIDING

APPELLEE'S BRIEF

W/ Addendum

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STATEMENT OF THE ISSUES

1. **HOW WAS THE PERSONAL REPRESENTATIVE OF THE JOHN T. GLEESON ESTATE INVOLVED IN THE SALE OF FOUR RESIDUARY HEIRS FUTURE INTERESTS IN THE ESTATE'S HOUSE TO PATRICK GLEESON AND MATTHEW GLEESON?**

2. **WHETHER A REAL ESTATE TRANSACTION IS VOID WHEN THE GRANTOR SIGNS A QUIT CLAIM DEED WHILE THE GRANTOR IS UNDER A CONSERVATORSHIP AND THE CONSERVATOR DOES NOT SIGN ANY DOCUMENT TO TRANSFER THE PROPERTY OR TO APPROVE THE TRANSFER?**

3. **WHETHER THE DISTRICT COURT ABUSED IT S DISCRETION WHEN IT DECLINED TO ORDER A FORMER PERSONAL REPRESENTATIVE TO PRESENT ALL OF THE DECEDENT'S FINANCIAL RECORDS.**

4. **WHETHER THE DISTRICT COURT ABUSED ITS DISCRETION WHEN IT ORDERED A DECEDENT'S ESTATE TO PAY A SUCCESSOR PERSONAL REPRESENTATIVE FOR FEES ATTRIBUTABLE TO THE SUCCESSOR PERSONAL REPRESENTATIVE'S PROCRASTINATION IN PERFORMING HIS DUTIES.**

STATEMENT OF THE FACTS

John T. Gleeson died on January 28, 1992, (App. 5 Aide Approving Sixth & Final Account, and Order Directing Partial Distribution of Estate numbered paragraph 1). On February 4, 1992, Jerome M. Gleeson was appointed personal representative for an informal probate of the John T. Gleeson Estate. (App. 52 & 53)

When John T. Gleeson died, he left a Last Will and Testament dated August 9, 1989 and a First Codicil to Last Will, dated January 19, 1992. (App. 7 - 17) The First Codicil permitted Jerome M. Gleeson to live at John T. Gleeson's residence until his youngest son, Patrick B. Gleeson completed highschool or attained the age of 19, whichever occurs first. (App. 15 Item XV) The residence of John T. Gleeson was located at 133 Independence Avenue, Bismarck, North Dakota and the legal description of that residence is, Lot 4, Block 4, John Gleeson Addition to the City of Bismarck, Burleigh County, North Dakota. (App. 46).

Jerome, while he and his son's lived in the John T. Gleeson residence was to be paid from Hauer-Metzel Contract, an asset of the John T. Gleeson Estate, \$3,000 per year. This \$3,000 was to pay real estate taxes, homeowners' insurance premium and maintenance costs on the John T. Gleeson Residence. (App. 15 last paragraph of A).

Jerome M. Gleeson's last child would turn 18, in 2002. (Tr. May 10, 1999, P.7, L.18-23).

There were four residuary heirs in John T. Gleeson's Last Will and Testament, (App. 7, Item 3) The four residuary heirs were Margaret Ann Weeks, Jerome M. Gleeson, Kathleen Mary Gleeson k/n/a Cathay Marie Gleeson, and George J. Gleeson.

(App. 13, Item 12).

A Quit Claim Deed, dated December 18, 1996, which was signed by the four residuary heirs of the John T. Gleeson Estate, Jerome M. Gleeson, Cathay M. Gleeson, George J. Gleeson and Margaret A. Weekes sold and transferred their residuary interest in Lot 4, Block 4, John Gleeson Addition to the City of Bismarck, Burleigh County, North Dakota, the John T. Gleeson's residence, to Matthew J. Gleeson and Patrick B. Gleeson. (App. 44 & 45). On January 17, 1997, Jerome M. Gleeson as personal representative of the John T. Gleeson Estate signed and delivered a Deed of Personal Representative for the John T. Gleeson residence to Matthew J. Gleeson and Patrick B. Gleeson. (App. 46).

After John T. Gleeson died, Jerome hired attorney Morris Tschider to handle the John T. Gleeson Estate. (Tr. May 10, 1999, P.5, L. 9 & 10). John T. Gleeson and Attorney Tschider made out an inventory for the John T. Gleeson estate. (Supp. App. 1-3). George J. Gleeson claims the estate left out millions of dollars and the documents and papers he wants relate to things George J. Gleeson claims occurred prior to John T. Gleeson's death. (Supp. App. 5).

Brian L. Giese was appointed Successor Personal Representative after Jerome M. Gleeson was removed as personal representative. (Supp. App. 10). Many of Brian Giese's problems while probating the John T. Gleeson estate were caused by George J. Gleeson. (Tr. October 26, 2000, P.15, L.24 & 25 and P. 16, L.1 - 6 and App. 56).

The lower court upheld Jerome M. Gleeson's power to sell the John T. Gleeson residence, (App. 26), and George J. Gleeson's transfer of his interest in that residence. (App. 27). That Court also declined to require Jerome M. Gleeson to produce additional

financial records of the decedent and ordered the estate to pay the fees of the Successor personal representative. (App.54). Because of these rulings, George J. Gleeson appealed. (App. 58).

ARGUMENT

ISSUE I. HOW WAS THE PERSONAL REPRESENTATIVE OF THE JOHN T. GLEESON ESTATE INVOLVED IN THE SALE OF FOUR RESIDUARY HEIRS FUTURE INTERESTS IN THE ESTATE'S HOUSE TO PATRICK GLEESON AND MATTHEW GLEESON?

Appellant, George Gleeson ("George") claims that Jerome M. Gleeson ("Jerome") sold the residence in the John T. Gleeson Estate ("Gleeson Estate") to his children, Matthew J. Gleeson ("Matthew") and Patrick B. Gleeson ("Patrick"). According to George, such a sale by Jerome was an improper exercise of Jerome's fiduciary duty as personal representative of the Gleeson Estate and is voidable under N.D.C.C. 30.1-18-13.

The problem with George's claim that Jerome improperly exercised his fiduciary duty as personal representative of the Gleeson Estate when he sold the residence in the Gleeson Estate to Matthew and Patrick is:

1. The sale was by Quit Claim Deed and the sellers were the four residuary heirs of the Gleeson estate and the buyers were Matthew and Patrick.
2. The money paid to the four residuary devisees all came from Matthew and Patrick and none came from or was paid to the Gleeson Estate.
3. Each of the four residuary devisees had the opportunity to freely decide by themselves whether or not to sell their interest in the residence of John T. Gleeson and each on his or her own decided to sell the John T. Gleeson

residence and signed the Quit Claim Deed.

4. That at no time after all of the residuary devices were paid from their interest in the residence of John T. Gleeson has any one of the devisees, ever tried to rescind the Quit Claim Deed for offer to repay the money he or she received from Matthew and Patrick.
5. That only after all four residuary devisees had sold their interest to Matthew and Patrick did Jerome issue a Personal Representatives Deed to Matthew and Patrick for the residence in the Gleeson Estate.
6. That after the Personal Representatives Deed was issued, the \$3,000 per year that had been paid to Jerome under the first codicil ceased and from that time on, the \$3,000 was distributed annually among the four residuary devisees.

Therefore, the four residuary devisees and not Jerome as personal representative of the John T. Gleeson estate sold their residuary interest in the John T. Gleeson residence.

George claims that Jerome's sale of the residence in the Gleeson Estate involves a substantial conflict of interest. To support of this claim George relies on *Cudworth vs. Cudworth* 312 N.W.2d 331 (N.D. 1981). The following facts in Cudworth sale can be distinguished from the facts in the sale of the Gleeson Estate residence:

1. The sale in Cudworth involved the estate because it was between the personal representative of the estate and his son while the sale of the Gleeson Estate residence didn't involve that estate because the sale was

between the four residuary devisees and Matthew and Patrick.

2. The money for the sale in Cudworth was paid to the estate while in the sale of the John T. Gleeson residence, the money was paid by Matthew and Patrick to the four residuary devisees and at no time was any of that money paid to the John T. Gleeson Estate.
3. In Cudworth, the heirs didn't have proper notice of the sale while in the Gleeson estate, the residuary heirs needed no notice because they were the sellers.
4. In Cudworth, the trial court voided the sale while in the Gleeson Estate, the trial court upheld the sale.

Because of the above factual differences between the sale in Cudworth and the sale in the John T. Gleeson residence, Cudworth does not support George's claim that the sale of the John T. Gleeson residence involved a substantial conflict of interest.

Jerome believes the issue of indispensable parties and Rule 19 of the N.D.R.Civ.Pro., raised in Cudworth is applicable to the case now before the court. This belief is based on the fact that Matthew and Patrick were purchasers of the residence of the Gleeson Estate and as such are indispensable parties to this lawsuit because the sale involved their money and if that sale is voided, then, unless they are made parties, their money won't be protected.

Jerome realizes the issue of Matthew and Patrick being indispensable parties is raised by him for the first time on appeal, however, Cudworth made it clear that the issues of indispensable parties required under Rule 19 of the N.D.R.of.Civ.Pro can be raised for

the first time on appeal. Therefore, Jerome believes it is proper for him to raise that issue now.

ISSUE II. WHETHER A REAL ESTATE TRANSACTION IS VOID WHEN THE GRANTOR SIGNS A QUIT CLAIM DEED WHILE THE GRANTOR IS UNDER A CONSERVATORSHIP AND THE CONSERVATOR DOES NOT SIGN ANY DOCUMENT TO TRANSFER THE PROPERTY OR TO APPROVE THE TRANSFER?

The trial court's ruling on this issue is found in the appendix starting on page 27 and ending at the top of page 29. The Statutes the trial court considered were N.D.C.C. 30.1-29-20 and N.D.C.C. 30.1-29-24(3)(g). Copies of these Statutes are attached to this Brief.

The trial court also discussed the powers of George's conservator that are found in the finding of fact and order appointing a conservator for George Gleeson. (App. 28).

The following is what the trial court decided as to the financial control of George's conservator and George's ability to transfer his interest in property:

George's conservator had full financial control over George's property. George's conservator had title to George's property. Jerome and the other beneficiaries were aware of George's conservator, yet George was the one who signed the quitclaim deed. The conservator did not object to the sale, and accepted the funds for George's account. The conservator never sought to rescind the sale of George's interest. (App. 28).

Section 30.1-29-20, N.D.C.C., allows George to transfer his interest in the property. According to the Editorial Board Comments, "the appointment of a conservator has no bearing on the capacity of the disabled person to contract or engage in other

transactions.” George agreed to transfer his interest in the property. (App. 28 & 29).

Another case that supports George’s ability to transfer his interest in real property is, Hauge vs. Bye 201 N.W. 159 (N.D. 1924), Bye involved a plaintiff who attempted to disaffirm a contract because he claimed he was very intoxicated at the time of the contract. The problem with the Plaintiff’s claim in Bye was that after the Plaintiff sobered up and learned of the contract, he failed to promptly disaffirm it. Instead, the Plaintiff in Bye after learning of the contract waited an unreasonable length of time before trying rescinding.

In the case now before the Court, George’s conservator was appointed on April 29, 1996. (App.63). When George signed the Quit Claim Deed conveying his interest in the residence of the Gleeson Estate on November 25, 1996 he still had a conservator. (App. 45). Then on July 21, 1997, George was found competent to manage his own affair. (App. 70). At that time, according to Bye, George after learning of the sale should have promptly disaffirmed the sale. Instead, George did nothing and still hasn’t started a rescission action or offer to pay back to Matthew and Patrick the money paid to him for signing the Quit Claim Deed.

Because of the above facts, the time for George to disaffirm the sale of the John T. Gleeson residence has long since past.

ISSUE III. WHETHER THE DISTRICT COURT ABUSED IT S DISCRETION WHEN IT DECLINED TO ORDER A FORMER PERSONAL REPRESENTATIVE TO PRESENT ALL OF THE DECEDENT’S FINANCIAL RECORDS.

Jerome has filed an inventory for the John T. Gleeson Estate and made available,

to the Court, the financial papers and financial document necessary for the probate of that estate.

George claims that John T. Gleeson has kept thousands, perhaps millions of dollars that is in trust for him and that Margaret M. (Jennings) Gleeson has kept thousands of dollars that is in trust for him. According to George, he believes his brother, Jerome and his sister Margaret A. (Gleeson) Weekes and Kathleen M. "Cathay" Gleeson have taken his funds.

The problem with George's claim is that he has never been able to present to the trial court any evidence that such trusts or money has ever existed. Now after the trial court has ruled against him, George wants the North Dakota Supreme Court to order his brother and two sisters to find financial records for the decedent, John T. Gleeson that have never existed.

Therefore, the ruling of the trial court declining to order Jerome's present financial records should be affirmed.

ISSUE IV. WHETHER THE DISTRICT COURT ABUSED ITS DISCRETION WHEN IT ORDERED A DECEDENT'S ESTATE TO PAY A SUCCESSOR PERSONAL REPRESENTATIVE FOR FEES ATTRIBUTABLE TO THE SUCCESSOR PERSONAL REPRESENTATIVE'S PROCRASTINATION IN PERFORMING HIS DUTIES.

The answers to this issue are all in possession of the Successor Personal Representative, Brian L. Giese. The documents that Mr. Giese presented to the Court regarding his fees appear to Jerome to be reasonable.

Many of the problems that Mr. Giese has as personal representative were caused

by George.

The following is an example of some of those problems:


All throughout these proceedings, George J. Gleeson's behavior had been disruptive and threatening. Things got so bad that George J. Gleeson was charged with terrorizing Bryan L. Giese, the Personal Representative. Ultimately, the Terrorizing charge was reduced to Disorderly Conduct. George J. Gleeson pled guilty to the Disorderly Conduct charge. See, Morton County Criminal No. 30-00-1959. (App. 56).

It is up to Mr. Giese if he wants to prepare an appendix that will set out all of the problems George has caused him. It is also up to Mr. Gleeson as Successor Personal Representative of the John T. Gleeson estate to justify his bills.

CONCLUSION

For the above and forgoing reasons, all of the rulings of the trial court should be upheld.

DATED at Mandan, North Dakota, this 7 day of October, 2002.


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CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that she is an employee in the office of Pulkrabek Law Firm and is a person of such age and discretion as to be competent to serve papers.

That on October 7th, 2002, she served, by hand delivering, a copy of the following:

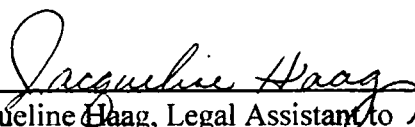
APPELLEE'S BRIEF and SUPPLEMENTAL APPENDIX

by leaving a copy with the person(s) hereinafter named or with their office, at their last known address as follows:

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The undersigned further certifies that on October 7th, 2002, she dispatched to the Clerk, North Dakota Supreme Court, an original and seven copies of the APPELLEE'S BRIEF, SUPPLEMENTAL APPENDIX, and a 3½" computer diskette containing the full text of the Brief.


Jacqueline Haag, Legal Assistant to
Benjamin C. Pulkrabek