20110217

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SEPTEMBER 14, 2011
STATE OF NORTH DAKOTA

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

In the Matter of the Estate of Eugene R. Camas, Deceased, Sherry Jensen f/k/a Sherry Nesemeier, Appellant, vs. Kevin Camas, Individually and as Personal Representative of the Estate of Eugene R. Camas, Deceased, Appellee.	**SUPREME COURT NO. 20110217** Civil No. 09-2011-PR-00085

ON APPEAL FROM ORDER DATED JULY 12, 2011,
DISTRICT COURT, EAST CENTRAL JUDICIAL DISTRICT,
CASS COUNTY, STATE OF NORTH DAKOTA

THE HONORABLE DOUGLAS R. HERMAN, PRESIDING

BRIEF OF APPELLANT, SHERRY JENSEN F/K/A SHERRY NESEMEIER

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JURISDICTIONAL STATEMENT

1. Sherry Jensen f/k/a Sherry Nesemeier (hereinafter "Jensen") timely appealed the Order entered on July 12, 2011. (Appendix ("App.") at 07). Jensen filed her Notice of Appeal with the district court on July 25, 2011. (Id.). Jensen's notice of appeal is timely pursuant to N.D.R.App.P. 4(a)(1) and this Court has jurisdiction over this appeal under N.D. Const. art. VI, §§ 2, 6, N.D.C.C. § 27-02-04 and §§ 28-27-01 through 28-27-02 and Matter of Estate of Eggl, 2010 ND 104, 783 N.W.2d 36 (holding that in an unsupervised probate, an order settling all claims of one claimant is final and appealable).

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. Whether the district court erred as a matter of law in its interpretation of Eugene R. Camas' Will by construing "personal property," as used in a testamentary bequest, to include only tangible personal property?

II. Whether the district court erred as a matter of law in denying Appellant's motion for formal probate with supervised administration of the Eugene R. Camas' estate?

STATEMENT OF THE CASE

2. Eugene R. Camas (hereinafter "Decedent") died March 23, 2011. (App. at 08). The Decedent's last known Will is dated February 28, 2002 (hereinafter "Will"), and was submitted for informal probate. (App. at 09). On May 25, 2011, Jensen, Appellant/Petitioner, motioned the district court for formal probate with supervised administration and for an order construing testamentary disposition of personal property of the Decedent after the Personal Representative, Kevin Camas (hereinafter "Camas"), expressed an opinion that Article II of the Will called for distribution of only tangible personal property to Jensen. (App. at 03). Personal Representative Camas responded on June 13, 2011, opposing said motion. (Id.). Jensen submitted a reply to the district court on June 17, 2011. (Id.).

3. On June 29, 2011, a hearing was held before the Honorable Douglas R. Herman, wherein the parties submitted oral argument for the district court's consideration. See Transcript ("Tr."). At the suggestion of the district court, post hearing briefs were submitted from both parties. (App. at 03). On July 12, 2011, the district court issued an Order denying Jensen's motion for formal probate and supervised administration and denying Jensen's motion for an order construing testamentary disposition of personal property of the Decedent. (App. at 03-06). Jensen filed this timely appeal on July 25, 2011. (App. at 07).

STATEMENT OF THE FACTS

4. The Decedent passed away on March 23, 2011, with a Will, and was survived by his two children, Jensen and Camas. (App. at 03). Camas petitioned for appointment as Personal Representative, pursuant to the Will, and was appointed Personal Representative on April 5, 2011, informally, without supervision or bond. (Id.) Decedent's Will consists of two bequest provisions. (App. at 03; 05-06). First, Decedent included the following provision in Article II of his Will: "I hereby leave an undivided one-half (1/2) interest in and to the personal property located in my personal residence which I own at the time of my death to my daughter, SHERRY NESEMEIER." (App. at 03; 10). Second, Decedent included the following residuary clause in his Will: "I give all the rest, residue and remainder of my property and estate of every kind and character whatsoever, and wheresoever situated to my son, KEVIN CAMAS." (App. at 05-06). These are the only bequest provisions in the Will.

5. Jensen petitioned the district court for interpretation of the Will, arguing that the district court should construe "personal property," as used in Article II of the Will, to include all tangible and intangible property found within Decedent's personal

residence at the time of his death. (App. at 03-04). Jensen further contended that formal supervised administration of the Will was necessary under North Dakota law given Camas' reluctance to distribute intangible personal property to Jensen. (App. at 03). Jensen advised the district court that it was her belief that located within Decedent's residence, at the time of death, were several items related to intangible personal property including, but not limited to, two businesses operated by Decedent, bank accounts, unknown bank or investment accounts, cash, notes, stock certificates, bonds and tangible personal property including vehicles. (App. at 10). Jensen further advised that it was her understanding that Camas, as Personal Representative, intended to only distribute to her nominal items of tangible personal property. (Id.).

6. Camas, the Personal Representative and the other sibling who was entitled to property under the Will, responded, arguing that "personal property located in my personal residence" should be limited to tangible personal property and that formal supervised administration of the Will was unnecessary. (App. at 04).

7. The trial court erroneously agreed with Camas, holding that "personal property," as used in Decedent's Will included only tangible physical personal property located in Decedent's residence and that formal supervised administration was unnecessary. (App. at 03-06).

LAW AND ARGUMENT

I. THE DISTRICT COURT ERRED IN HOLDING THE TERM "PERSONAL PROPERTY," AS USED IN DECEDENT'S WILL, INCLUDES ONLY ITEMS OF TANGIBLE PERSONAL PROPERTY.

A. Standard Of Review

8. A court's primary objective in construing a will is to ascertain the testator's intent, if that intent is not contrary to law. Matter of Estate of Peterson, 1997

ND 48, ¶ 14, 561 N.W.2d 618. The testator's intent, as expressed in his will, controls the legal effect of his dispositions. Id. If the language of a will is clear and unambiguous, as it is in this case, the testator's intent must be determined from the language of the will itself. Matter of Estate of Neshem, 1998 ND 57, ¶ 7, 574 N.W.2d 883. Whether a will is ambiguous is a question of law for the court to decide. Id. at ¶ 8. The standard of review for questions of law is de novo, which means it is fully reviewable. See State ex. rel. K.B. Bauer, 2009 ND 45, ¶ 8, 763 N.W.2d 462; Serr v. Serr, 2008 ND 229, ¶ 10, 758 N.W.2d 739.

9. The district court, in the instant matter, appropriately determined that the Will of the Decedent was unambiguous. The district court, however, erred in concluding, as a matter of law, that the term "personal property," as used in Decedent's Will, constituted only tangible personal property. " 'This Court reviews questions of law de novo. . .'" Matter of Estate of Eggl, 2010 ND 104, ¶ 5, 783 N.W.2d 36 (quoting Schlosser v. N.D. Dep't of Transp., 2009 ND 173, ¶ 7, 775 N.W.2d 695. Therefore, this Court must determine de novo whether the term "personal property" includes both tangible and intangible property.

B. **"Personal Property," As Used In The Will Of Decedent, Must Be Found To Include Both Tangible And Intangible Property Under North Dakota Statutory Authority**.

10. While the issue of what passes under the term "personal property" in a will has not been decided by this Court, North Dakota statutory authority recognizes and supports the conclusion that "personal property" is everything other than real property. The district court, however, improperly ignored this statutory authority and erroneously relied upon outside jurisdictional authority to support its erroneous conclusion in this case

that "personal property" constituted only tangible personal property located in Decedent's residence at the time of death.

11. In North Dakota, property is either real or personal. N.D.C.C. § 47-01-02 (stating that property is either real or immovable or personal or moveable). Real property is land and things fixed to the land. N.D.C.C. § 47-01-03. Land is the solid material of the earth. N.D.C.C. § 47-01-04. Personal property is *every other kind of property*. N.D.C.C. § 47-01-07. (emphasis added). Pursuant to N.D.C.C. § 1-02-02, words are to be understood in their ordinary sense unless a contrary intention plainly appears. "Personal property" is a technical term and under North Dakota jurisprudence, "technical words used in a will should be construed according to their technical meaning by reference to technical context unless a contrary intention is plainly expressed in a will." Matter of Estate of Brown, 1997 ND 11, ¶ 17, 559 N.W.2d 818 (citing 80 AmJur2d *Wills* § 1158 (1975) and N.D.C.C. § 1-02-03) (part) ("Technical words and phrases and such others as having acquired a peculiar and appropriate meaning in law, or as are defined by statute, must be construed according to such peculiar and appropriate meaning or definition."). Moreover, when construing a will, this Court has advised, if possible, to harmonize all parts of the will so that each word and phrase is given effect. Matter of Estate of Brown, 1997 ND at ¶ 24. Every word and phrase is presumed to have meaning, and no word or phrase that reasonably can be given effect should be disregarded. Quandee v. Skene, 321 N.W.2d 91, 95 (N.D. 1982).

12. The district court erred by simply ignoring the aforementioned statutory authority for guidance in constructing the phrase "personal property." Had the district court properly considered the applicable statutory authority, the court would have reached the proper conclusion – "personal property" includes both tangible and intangible

personal items. Indeed, the Decedent was clear in his devise of "personal property located in Decedent's residence" to Jensen to include tangible and intangible property. The Will was prepared by a competent, experienced, licensed North Dakota attorney who drafted the Will to carry out the wishes of the Decedent by choosing the technical words carefully, using the phrase "personal property" to include both tangible and intangible property." (Tr. at 35); See In re Davidson's Will, 26 N.W.2d 223, 225 (Minn. 1974) (stating that in light of the fact that the will was drafted by a lawyer it is presumed that the use of technical words, which have definite and long-accepted meaning, were used correctly and with the intent that they would be interpreted in conformity with the law) (citing In re Estate of Boutelle, 15 N.W.2d 506 (Minn. 1944) and 154 A.L.R. 966); see also Gardner v. Collins, 27 U.S. 58 (1829) (stating that lawyers generally use technical words - not in haste).

13. Based upon the statutory definition given to the phrase "personal property," and the well-established principles of will construction in North Dakota, the district court should have harmonized the Decedent's entire Will. The court erred in restricting "personal property," as used in Decedent's Will, to include only tangible personal property. The district court further erred in holding that the language which specifically references a location within the personal residence excludes the possibility that the Decedent intended that Jensen receive half of his intangible property. As support for this erroneous holding, the court cited to the definition of "intangible property." (App. at 05). The Will does not contain the term "intangible personal property." Accordingly, referring to the definition of "intangible personal property," a term not used in Decedent's Will, is in error. Indeed, the district court not only improperly disregarded North Dakota statutory authority in reaching its conclusion, but it also ignored well-

established rules of will construction and therefore committed reversible error by essentially reforming Decedent's Will when his intentions were clearly established.

14. Jensen is not asking this Court, nor did she ask the district court, to take a leap of faith, but is merely asking this Court to give the words "personal property" their technical meaning, i.e., personal property includes both species of property, tangible and intangible, and therefore order distribution of half of all property located in Decedent's residence at the time Decedent's death.

15. Again, while the issue of what passes under the term "personal property" in a will has not been decided by this Court, as set-forth above, North Dakota statutory authority clearly mandates it includes both tangible and intangible property without the need to explore outside authority on this issue. That being said, outside authority supports the conclusion that the term "personal property," as used in Decedent's Will, includes both tangible and intangible property. For example, Black's Law Dictionary defines personal property as follows: "[A]ny moveable or intangible thing that is subject to ownership and not classified as real property." BLACK'S LAW DICTIONARY (9th ed. 2009). This definition coincides, wholly, with the previously delineated North Dakota statutes and therefore supports the conclusion that "personal property" includes both tangible and intangible property.

C. **The Jurisprudence Relied Upon By The District Court Is Distinguishable**.

16. Again, the issue of what passes under the term "personal property" in a will has not been decided by this Court. In recognizing this, the district court erroneously ignored North Dakota statutory authority and immediately relied upon outside jurisprudence in reaching its erroneous conclusion. The case of Turner v. Reed, 518

S.E.2d 832, 834 (Va. 1999), is the main case relied upon by the district court in reaching its erroneous conclusion. (App. at 05). The Turner case is actually a case *delineating an exception to the general rule* established by the Virginia Supreme court in Bowles v. Kinsey, 435 S.E.2d 129, 130 (Va. 1993), wherein the Virginia Supreme court held that the term "personal property" included both tangible and intangible forms of property. (emphasis added). A proper review of Turner and Bowles demonstrates that Bowles is the persuasive authority to the instant matter and that Turner is distinguishable.

17. In Turner, the Virginia Supreme court affirmed a previous determination that while *"personal property" was a technical legal term which included both tangible and intangible personal property*, in the context that the term was used in the testator's will, it only meant tangible personal property. Turner, 518 S.E.2d at 834. (emphasis added). The testator in Turner bequeathed her property by stating, " 'I give, devise . . . my residence . . . and *all of the furniture and personal property* located in and about said residence, along with any automobile which I may own at the time of my death . . .'" Id. at 833. (emphasis added). The court found the prefacing language – "all of the furniture" - persuasive as to the testator's intent. Id. at 834. The prefacing language in Turner is clearly not present in the instant matter. Rather, the testator in the instant matter bequeathed "the personal property located in my personal residence." As such, Turner is not persuasive to the instant matter and in fact, the leading case, Bowles, in Virginia supports Jensen.

18. In Bowles, the more appropriate case to be relied upon in the instant matter, the court recognized that the term "personal property is a technical term and that the testator is generally presumed to have used that term in its technical sense." Bowles, 435 S.E.2d at 129. Additionally, the court recognized that Black's Law Dictionary

defines personal property to include both tangible and intangible forms of property. Id. (citing BLACK'S LAW DICTIONARY 1217 (6th ed. 1990)). Finally, the court recognized that the testator had the will drafted by an attorney, as in the instant case, and had the testator intended to limit the provision to tangible personal property, she could have directed her attorney to effectuate that result. Id. All three of the aforementioned points are applicable to the instant matter and should be considered when reaching the conclusion that "personal property" includes both tangible and intangible personal property. Personal property is a technical term and as previously delineated, this Court has advised that technical terms should be given their technical meaning. Matter of Estate of Brown, 1997 ND at ¶ 24. Moreover, not only does Black's Law Dictionary define personal property to include both tangible and intangible personal property, but so does the North Dakota Century Code. Lastly, the Will in the instant case was also drafted by an experienced attorney and therefore, with little ease, more specific language could have been implemented to define personal property.

D. Other Courts Have Held, Under Similar Circumstances, That The Term "Personal Property" In A Will Includes Intangible Personal Property.

19. Furthermore, other courts have reached the conclusion, under similar circumstances as in the instant case, that the term "personal property" includes intangible personal property. In Jacoway v. Brittain, 360 So.2d 306 (Ala. 1978), for example, the testator bequeathed "all my personal property, located in my home, or on my property," and the court held that the bequest included cash and certificates of deposit in a bank. A checkbook, a passbook savings book, and a key to a safety deposit box were found in the safety deposit box. Id. at 307. The court noted that standing alone, the words "all my personal property" would include money on hand and on deposit, whether in a bank or

saving and loan association account, and did not read the phrase, "located in my home, or on my property" as clearly indicating that the testator intended this to be a limitation on the bequest of "all my property." Id. at 308. The court concluded that it could not find within the four corners of the will any language that indicated the testator intended to make a distinction between tangible and intangible personal property, and it was undisputed that the passbook and the key to the safety deposit box were on the testator's property. Id. All too similarly, in the instant matter, there is no language within the four corners of the Will that indicates that the Decedent intended to make a distinction between tangible or intangible property, and it is believed that intangible property was located in Decedent's residence at the time of death.

20. The district court recognized the holding in Jacoway, but found that it was distinguishable because of the "broader, more encompassing language." Presumptively, the district court was referring to the "or on my property" part of the bequest in Jacoway. The district court, however, failed to recognize that the Jacoway court explicitly stated that it found the words "all my personal property," *standing alone*, would include money on hand and on deposit, whether in a bank or saving and loan association account. Id. (emphasis added). Thus, the court would have reached its holding despite the broad language used. Combined with the fact that the district court failed to recognize that the Turner case was far more distinguishable in that it had limiting language – "all of my furniture and personal property," and the disregard of North Dakota statutory authority, it is clear that the district court erred in its decision.

21. In another case, Emmert v. Hearn, 522 A.2d 377 (Md. 1987), the Maryland Court of Appeals held that testator's intangible, as well as tangible, personal property passed under the paragraph which bequeathed "all my personal property" to the

surviving children and not into the intervivos trust through the residuary clause. Specifically, the will provided that "I bequeath all my personal property to my surviving children to be divided equally." Id. at 378. The will went on to state "[A]ll the rest, residue and remainder of my estate, real and personal, of every nature and description, and wherever situate, including any property over which I may have a general power of appointment, I give, devise and bequeath unto the INTERVIVOS TRUST." Id. At death, the testator owned real property appraised at $425,000, tangible personal property worth $2,500, and intangible personal property, including corporate stocks, bonds, and bank accounts, appraised at $325,000. Id. at 379. The personal representative, in a petition for declaratory relief, alleged that the phrase "personal property" was ambiguous when considered in light of other provisions of the will and that the existence of the residuary clause in the will indicated the testator's intention that some portion of his assets would remain and pass under it. Id. The court, however, found nothing on the face of the will that qualified or limited the bequest of personal property, noting that there were no examples to illustrate the type or nature of the personal property, nor any description or location of the personal property. Id. at 381. The court concluded that the language used was unambiguous on its face and that no latent ambiguities existed, so its role in the construction of the will was at an end. Id.

22. In Sandy v. Mouhot, 438 N.E.2d 117 (Ohio 1982), the Supreme Court of Ohio held that the testator's intent in a will which bequeathed "all of my personal property and household goods to my niece" could be interpreted as bequeathing all personal property including intangible personal property. The court, in reaching its conclusion, rejected the argument that the clause must be interpreted to include only tangible personal property in order to give effect to the residuary clause, pointing out that

such a clause was frequently used to cover potential contingencies which may develop in the planned distribution and was not null unless property was distributed through it. Id. at 119. The court noted that contrary to the rule of ejusdem generis, there was no enumeration or listing of things in the will, instead it contained a general term, personal property, and a more particular description, pointing out that a general term will not be reduced by a particular description when the description appears to be an example or means for identifying the property further. Id.

23. Applying the aforementioned jurisprudence to the instant case, Article II of the Will clearly states "personal property," which must be found to be tangible and intangible property under North Dakota law. The Decedent made no distinction within the four corners of his Will to indicate any distinction between tangible and intangible personal property. The Will is unambiguous, and Article II must be construed as an all-encompassing devise of an undivided one-half (1/2) interest in all of the Decedent's non-real estate property to Jensen.

E. The District Court's Reliance On The Residual Clause Of The Will To Reach Its Holding Was Erroneous.

24. In justifying its holding, the district court held that the residual clause of Decedent's will, the only other bequest provision, suggested that the Decedent did not intend to give half of his intangible personal property to Jensen. (App. at 05-06). The standard residual clause reads as follows: "I give all of the rest, residue and remainder of my property and estate of every kind and character whatsoever, and wheresoever situated to my son, KEVIN CAMAS." (Id.). The purpose, however, of a residuary clause "is to dispose of the remaining property of the Decedent not specifically devised or bequeathed." Sandy v. Mouhot, 438 N.E.2d at 119. Thus, a will, especially one that is

vigilantly planned, may allocate all assets through prior bequest provisions and none could remain for the residuary clause. Id. In other words, a residuary clause is frequently used "to cover potential contingencies which may develop in the planned distribution." Id.

25. The attorney who drafted this Will, in his professional position to ensure that there was no intestacy as to any of the property, included within the Will a standard residual catchall bequest. The use of the words "rest and residue" clearly indicate the desire of the Decedent to dispose the balance of his estate and the words "of every kind" and additional verbage simply ensure that all property was disposed of. Therefore, the district court's claim that the residuary clause of Decedent's Will suggests that Decedent's intent was not to give half of his intangible personal property to Jensen is without merit and in error.

F. The Additional Cases Cited By Camas To The District Court Are Distinguishable And Should Not Be Relied Upon In This Case.

26. In addition to the Turner case, addressed above, Camas cited to the district court additional outside jurisprudence that are wholly distinguishable and of no persuasive value in this case. For example, Camas cited to Smith v. Evans, 417 S.E.2d 856 (S.C. 1992) in support of his position. In Smith, the testator's will provided as follows: " 'I give, devise and bequeath unto my sister, Roxie Smith, my real property located at 16 P Street, Anderson, South Carolina, and all contents therein in fee simple.'" Smith, 417 S.E.2d at 857. Reading the will as a whole, which evidenced an intent to equally divide the property, and finding no explicit or implicit intent of the testator to bequeath more than what is generally considered "contents" of a home, the court concluded that "contents" was limited to tangible items. Id. at 858. Quite simply, the

bequest in Smith differs significantly from the bequest in the instant case in that it devises real property and all of its "contents." Furthermore, there is no evidence in the instant Will evidencing intent that the testator wanted the Personal Representative to receive both tangible and intangible personal property located in his residence.

27. A close reading of another case cited by Camas, McLane v. Chancey, 200 S.W.2d 782 (Ark. 1947), illustrates that it is also wholly distinguishable from the instant matter. In McLane, those parts of testator's will, material to the issue, read as follows:

> 'To Bertie Walker McLane, I give, devise, and bequeath my home place together with all of the personal property therein, on Lots 7, 8, 9 and 10, all in Block 16, in the Town of Ozark, Arkansas.'
>
> 'Then after all expenses are paid, if anything remains, real estate, personal property, or mixed, money or any other valuable assets, shall be gathered together by a trustee, selected by the parties interested and named in this will and approved by the Court having jurisdiction and shall be equally divided between the following persons and institutions: The First Methodist Church of Ozark, Arkansas. Mrs. Louella Rice. Mrs. Bessie Hail Travis.'

McLane, 200 S.W.2d at 782. In determining whether insurance policies and postal savings certificates qualified as "personal property" in the home, the Court concluded that based upon the will in its entirety, that the intent of the testator was to give personal property as only the usual and ordinary household effects. Id. at 784. The court reached this conclusion, at least in part, based upon the above iterated second paragraph wherein the testator discussed personal property that might remain. Id. In the instant matter, the Will reads quite differently from the will described in McLane. The standard residuary clause in the instant matter does not read like the second bequest in McLane. Moreover, other Arkansas courts have reached a contrary result on this particular issue. See Turner v. Estate of Fletcher, 483 S.W.2d 176 (Ark. 1972) (a devise of a life estate in a farm residence and realty and "all furnishing, fixtures, appliances, silverware, utensils, jewelry,

sporting goods, personal effects and every other kind of personal property of any kind or nature that may be contained in my said home" was held to include traveler's checks, bank stock, corporate stock, insurance trust certificate, and stock in an agricultural cooperative which were found in residence); Winkler v. Woodruff, 182 A. 409 (Ark. 1935) (holding that a bequest of "all furniture, household furnishings and personal property of any kind whatsoever" in the testator's residence embraced cash, shares of stock, jewelry, and wearing apparel found in the residence).

28. These cases, in addition to the Turner v. Reed case relied upon by the district court, when properly examined, are distinguishable from the instant matter and are therefore of no persuasive value. Quite simply, the conclusion that "personal property" includes both tangible and intangible property is not only supported by outside jurisprudence, but also North Dakota statutory authority and precedent pertaining to will construction. Accordingly, the district court erred in its conclusion and its decision should therefore be reversed.

II. THE DISTRICT COURT ERRED IN HOLDNG THAT FORMAL SUPERVISED ADMINISTRATION OF DECEDENT'S ESTATE WAS UNNECESSARY.

29. The district court, in reaching its conclusion that "personal property" consisted of only tangible property in Article II of the Decedent's Will, concluded that formal or supervised administration of Decedent's estate was not necessary. (App. at 06). This conclusion, however, was in error given that the district court's conclusion that "personal property" consisted of only tangible property in Article II of the Decedent's Will was also in error. Moreover, given Camas' reluctance to distribute to Jensen intangible personal property and the belief that Camas had already disposed of property of the estate to which Jensen was entitled, supervised administration pursuant to

N.D.C.C. Chapter 30.1-16, was and remains necessary to protect Jensen's interest in the estate.

30. Under N.D.C.C. § 30.1-16-02, the district court shall order supervised administration upon a finding that it is necessary for protection of persons interested in the estate. Jensen set forth, in her Affidavit to the district court, that she is an interested party as daughter of the Decedent and that she believed that Camas, as Personal Representative, intended to only distribute to her nominal items of tangible personal property. (App. at 09-10). This, under N.D.C.C. § 30.1-16-02(2), established that formal probate with supervised administration was "necessary for protection of persons interested in the estate." Furthermore, Jensen's Motion, requesting an order construing testamentary disposition of personal property of the Decedent, requested construction of the Will, which if granted, would necessitate Camas to dispose of the estate assets differently than he had previously done.

31. Based upon such, the district court erred not only in construing "personal property" to include both tangible and intangible personal property, but also in declaring that supervised administration was unnecessary. Without supervised administration and upon a determination that Jensen is entitled to assets that the Personal Representative has already disposed of, Jensen will be left in a position of attempting to "track down" assets. Supervised administration simply requires the Court to supervise any distribution of the estate. This can certainly be accomplished without any harm to Camas. Accordingly, Jensen requests that this Court conclude that "personal property" consists of both tangible and intangible personal property and that formal supervised administration is necessary in order to protect Jensen's assets in the estate.

CONCLUSION

32. For the above reasons, Jensen respectfully requests the judgment and order of the district court be reversed, vacated, and the matter remand to the district court with instructions that "personal property," as used in Decedent's Will, includes both tangible and intangible personal property and that based upon such, formal supervised probate is necessary to protect Jensen's interest in the Decedent's estate.

Respectfully submitted this 14th day of September, 2011.

VOGEL LAW FIRM

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IN THE SUPREME COURT
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In the Matter of the Estate of Eugene R. Camas, Deceased, Sherry Jensen f/k/a Sherry Nesemeier, Appellant, vs. Kevin Camas, Individually and as Personal Representative of the Estate of Eugene R. Camas, Deceased, Appellee.	**SUPREME COURT NO. 20110217** Civil No. 09-2011-PR-00085 **AFFIDAVIT OF SERVICE BY EMAIL**

STATE OF MINNESOTA)
) SS
COUNTY OF CLAY)

Stephanie Joy, being first duly sworn upon oath, deposes and says that she is of legal age and not a party to the above-entitled matter.

On September 14, 2011, Affiant delivered via e-mail a true and correct copy of the following documents:

1) Brief of Appellant, Sherry Jensen f/k/a Sherry Nesemeier.

A copy of the foregoing was securely e-mailed as follows:

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To the best of Affiant's knowledge, the e-mail address above given is the actual e-mail address of the party intended to be so served and said party has consented to service by e-mail.

Stephanie Joy

Subscribed and sworn to before me this 14th day of September, 2011.

(SEAL) DEANN RAE LIEN
NOTARY PUBLIC—MINNESOTA
My Commission Expires JAN. 31, 2015

Notary Public, Clay County, Minnesota