

STATE OF MICHIGAN
COURT OF APPEALS

In re ESTATE OF DAVID ERNEST HAGUE.

CHEMICAL BANK,

Appellant,

v

KATHERINE J. BROUGHTON, Personal
Representative of the ESTATE OF DAVID ERNEST
HAGUE,

Appellee.

In re DAVID HAGUE LIMITED TRUST.

CHEMICAL BANK,

Appellant,

v

KATHERINE J. BROUGHTON, Trustee of the
DAVID HAGUE LIMITED TRUST,

Appellee.

UNPUBLISHED
October 14, 2021

No. 355832
Otsego Probate Court
LC No. 20-010011-DA

No. 356029
Otsego Probate Court
LC No. 20-010143-TV

Before: REDFORD, P.J., and K. F. KELLY and LETICA, JJ.

PER CURIAM.

In Docket No. 355832, appellant, Chemical Bank, appeals as of right the opinion and order of the probate court denying its motion for reconsideration of the court's prior order denying its motion to act as co-personal representative of the estate of the decedent, David Ernest Hague, with appellee, Katherine J. Broughton, the decedent's daughter. In Docket No. 356029,¹ appellant, Chemical Bank, appeals as of right the probate court order granting Broughton's motion to dismiss the trust petition filed by Chemical Bank. In Docket No. 355832, we affirm the probate court order denying appellant's motion for reconsideration of the request to act as co-personal representative of the decedent's estate. In Docket No. 356029, we vacate the probate court order granting Broughton's motion to dismiss and remand for further proceedings consistent with this opinion.

I. BASIC FACTS AND PROCEDURAL HISTORY

Following the death of the decedent, Broughton filed a petition in the probate court seeking intestate probate of the decedent's estate and to be appointed the sole personal representative. Broughton asserted that, while she was in possession of a copy of the decedent's will, the original document could not be located, and therefore, it should be presumed that the decedent intended to revoke the will. Soon after, Chemical Bank filed a petition in the probate court seeking to probate the decedent's will and to be appointed co-personal representative of his estate. Chemical Bank asserted that it had located the decedent's will shortly after his death and promptly submitted it to the probate court.

The decedent's will contained the following provision concerning who would serve as his personal representative:

I nominate, constitute, and appoint KATHERINE J. BROUGHTON and NORTHWESTERN BANK, a Michigan banking corporation, of Traverse City, Michigan, as Co-Personal Representatives of this, my Last Will and Testament. If at any time either is unwilling or unable to act, then the other shall serve as sole Personal Representative. . . .

Following the execution of the will but prior to the decedent's death, Northwestern Bank was acquired by Chemical Bank, which is a subsidiary of the company known as TCF. Chemical Bank alleged that, as the corporate successor to Northwestern Bank, it was entitled to serve as co-personal representative. It submitted that state banking rules permitted the substitution. However, Broughton asserted that she was entitled to serve as the sole personal representative because Northwestern Bank no longer existed and the will did not provide for a successor to substitute for Northwestern Bank.

At the hearing on Chemical Bank's petition to serve as co-personal representative, counsel for the bank acknowledged that there was not much left to do in the probate proceeding. However, Chemical Bank alleged that there had been no inventory or accounting completed and the pour-

¹ The appeals were consolidated to advance the efficient administration of the appellate process. *In re Hague Estate*, unpublished order of the Court of Appeals, entered February 1, 2021 (Docket Nos. 355832; 356029).

over will caused devises to transfer into the trust. It was further asserted that the decedent had two children and three stepchildren, and the handling of the probate matter would determine if the three stepchildren would receive the proceeds of the condominium sale. Chemical Bank alleged that there was a reason for the bank to serve in the role of co-personal representative because, as a fiduciary, it would ensure accountability and professionalism. Additionally, Chemical Bank noted that the same issue could arise in the trust proceeding.

On the contrary, Broughton's counsel claimed that, as the personal representative, she had secured the decedent's property and sold it and would ensure that the stepchildren receive their share of the trust. Additionally, the language appointing the personal representative did not provide for a successor to Northwestern Bank, evidencing the decedent's intent to allow Broughton to serve as the sole personal representative. She further alleged that, even though the trust was not pending before the court, the probate judge had "eyes on the case." The hearing was adjourned because of time constraints without a decision.

When the hearing resumed, Chemical Bank acknowledged that the decedent's family did not want it to serve as co-personal representative. Further, it noted that the estate assets were nearly completely gathered. Although the parties posited whether an agreement could be reached on this issue, no formal resolution or stipulation was finalized or placed on the record. On the contrary, Broughton asserted that she was the sole personal representative, and there was no jurisdiction over the trust because it was not pending before the probate court. It was alleged that the estate did not want Chemical Bank to serve as co-personal representative to avoid additional legal work and costs.

Following the hearing, the court entered an order appointing Broughton as sole personal representative. Chemical Bank filed a motion for reconsideration.

Chemical Bank then filed a petition for limited trust supervision in which it requested recognition as co-trustee. The trust document contained the following provision concerning who would serve as trustee:

The First Successor Co-Trustees shall be KATHERINE J. BROUGHTON and NORTHWESTERN BANK, a Michigan banking corporation. If KATHERINE J. BROUGHTON should decline or be unable to act as Co-Trustee, then NORTHWESTERN BANK shall serve as the sole Successor Trustee. If NORTHWESTERN BANK should decline or be unable to act as Co-Trustee, then KATHERINE [sic] J. BROUGHTON shall serve as the sole successor Trustee.

Chemical Bank noted that it acquired Northwestern Bank after the trust document was executed and before the decedent's death. The bank alleged that it accepted the role of co-trustee on December 2, 2019, and Broughton did not protest the bank's role, but signed documentation evidencing her status as a co-trustee. Therefore, Broughton was estopped from contesting Chemical Bank's role as co-trustee pursuant to the doctrines of estoppel and laches. Furthermore, Chemical Bank noted that the decedent, as the settlor of the trust, maintained substantial deposits and investments with the bank.

Broughton filed a motion to dismiss Chemical Bank’s petition for limited trust supervision, and similar to the co-personal representative argument, submitted that the language of the trust did not permit Chemical Bank to succeed Northwestern Bank.

A brief hearing was held over Zoom. It was noted that, in addition to the parties and their attorneys, the beneficiaries of the trust were viewing the hearing. It was further alleged that the beneficiaries supported Broughton’s sole appointment as the trustee. Following this hearing, the probate court entered an order denying Chemical Bank’s motion for reconsideration in the estate matter and granting Broughton’s motion to dismiss in the trust matter. The probate court concluded that the parties stipulated that its ruling from the probate case denying Chemical Bank’s request to serve as co-personal representative would be adopted in the trust proceeding and preclude Chemical Bank from serving as co-trustee.

II. ANALYSIS

“The standard of review on appeal in cases where a probate court sits without a jury is whether the court’s findings are clearly erroneous.” *In re Estate of Bennett*, 255 Mich App 545, 549; 662 NW2d 772 (2003). A clear error occurs “when a reviewing court is left with a definite and firm conviction that a mistake has been made, even if there is evidence to support the finding.” *Id.* “We review de novo a probate court’s construction and interpretation of the language used in a will or a trust.” *In re Stillwell Trust*, 299 Mich App 289, 294; 829 NW2d 353 (2012).

A. DOCKET NO. 355832

Chemical Bank first alleges that the probate court erred by failing to make findings concerning whether the decedent died intestate. We disagree. Although the probate court never explicitly articulated that the decedent died testate and that a valid will existed, the court’s findings and order clearly implied as much. The probate court’s decision that Chemical Bank would not be allowed to serve as co-personal representative was, in part, premised on the language of the will, and the opinion contained several references to the will. For example, the court stated that the will contained “no language indicating the ‘successors and assigns’ of Northwestern Bank would act as Personal Representative if Northwestern Bank was unable to act.” The court’s reliance on this language when making its decision clearly implied an understanding that there was a valid will.

Chemical Bank next asserts that the probate court erred by failing to probate the will. It is unclear from the lower court record whether the will was probated.² Nonetheless, Chemical Bank lacks standing to raise this argument. Only an “interested person” has standing to request that a will be probated. MCL 700.3301; MCL 700.3502. The term “interested person” includes heirs,

² Broughton opposed Chemical Bank’s request to serve as co-personal representative because she had nearly completed the disposition of the estate by securing and selling the property. Specific allegations addressing the action that Broughton took that were inconsistent with the terms of the will are not delineated. The lower court record reflects that the inventory was filed.

devisees, creditors, beneficiaries, “a person that has priority for appointment as personal representative,” and “any other person that has a property right in or claim against a trust estate or the estate” MCL 700.1105(c). Chemical Bank cannot assert standing as a personal representative because the court held that Chemical Bank was not a successor co-personal representative to Northwestern Bank. Chemical Bank also cannot argue that the provisions making gifts to the will create standing because the court found that Chemical Bank was not a co-trustee.³ Therefore, Chemical Bank lacks standing.

B. DOCKET NO. 356029

Chemical Bank contends that the probate court erroneously premised its decision to dismiss the trust petition on a mistaken belief that the parties had stipulated that the court’s decision in the estate matter would bind the parties in the trust matter. We agree.

In its opinion and order, the probate court stated that “[a]t a status conference before the Court on October 20, 2020, the parties stipulated that the decision in the first case on the Motion for Reconsideration would be binding on the Court and the Parties in the instant case.” The probate court, on that basis alone, granted Broughton’s motion to dismiss Chemical Bank’s petition for limited trust supervision. However, the record contains no support for the court’s assertion that the parties agreed to a stipulation and its terms. On the contrary, when the court asked the parties at the hearing if they agreed that one decision could resolve both issues, Chemical Bank’s counsel explicitly stated that the issues should be decided separately “because there are factual and legal distinctions.” The court then informed the parties that it would issue an opinion on Chemical Bank’s motion to reconsider in the estate matter and then at a future time it would issue an opinion on Broughton’s motion to dismiss in the trust matter. Because the probate court’s order was premised on an erroneous finding, we remand for determination of whether Chemical Bank is entitled to serve as co-trustee.⁴

We affirm the probate court’s order denying Chemical Bank’s motion to reconsider in Docket No. 355832. We vacate the probate court’s order granting Broughton’s motion to dismiss in Docket No. 356029 and remand this case to the probate court to decide, without reference to its

³ We note that Chemical Bank could revisit this issue if the trial court finds on remand that it is entitled to serve as co-trustee.

⁴ There were issues pertaining to the trust litigation that were not pertinent to the probate of the will. Chemical Bank submitted a document of acceptance to act for the trust and correspondence with Broughton evidencing that they were acting as co-trustees. Thus, Chemical Bank raised issues addressing banking rules, estoppel, and laches. However, there was no discussion on the record whether the trust beneficiaries would waive any claims against Chemical Bank if it did not serve as a co-trustee and in light of its function in maintaining the deposits and investments. The probate court should address these claims on remand and require additional legal briefing if deemed necessary. Neither party may tax costs. Broughton did not file a brief on appeal and, in any event, neither party prevailed in full.

decision in Docket No. 355832, whether Chemical Bank is entitled to serve as co-trustee, and for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ James Robert Redford

/s/ Kirsten Frank Kelly

/s/ Anica Letica