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**DISTRICT II**

February 25, 2015

To:

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

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2014AP985

In re the estate of Harold Carpenter: Kathleen M. McAllister v.  
Lois C. Noone (L.C. # 2013PR304)

Before Brown, C.J., Neubauer, P.J., and Gundrum, J.

Kathleen M. McAllister appeals a circuit court order dismissing her petition for the appointment of a special administrator. Based on our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2013-14).<sup>1</sup> We affirm the order of the circuit court.

Harold Carpenter died testate in August 2013. He was survived by his wife and their ten children, including McAllister and Lois C. Noone. Carpenter's codicil named Noone as personal representative.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2013-14 version.

In November 2013, McAllister filed a petition for the appointment of a special administrator for Carpenter's estate. The petition contained a rider setting forth various reasons for the appointment including allegations of undue influence by Noone, lack of capacity by Carpenter, lost assets, and breach of a fiduciary duty. It then summarized the request with the following language:

For these reasons, Petitioner believes there may be claims to be brought on behalf of Decedent's estate for the recovery of property or damages. Accordingly, Petitioner has filed this petition to have a Special Administrator appointed to assist with obtaining records as identified below and to investigate whether claims should be filed on behalf of the Decedent's estate.<sup>2</sup>

Noone objected to the petition and moved for its dismissal. Following a hearing on the matter, the circuit court dismissed the petition. This appeal follows.

WISCONSIN STAT. § 867.07 sets forth the grounds for appointment of a special administrator and provides in relevant part:

[T]he court may appoint a special administrator if it appears that:

- (1) There is no estate to be administered and an act should be performed on the part of the decedent, the performance of which affects or is of importance to the petitioner or any other person.
- (2) The final judgment of distribution in the estate has been entered and an act remains unperformed in the estate, or that unadministered assets have been found or may be found belonging to the estate.
- (3) The estate can be settled under s. 867.01 or 867.02.

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<sup>2</sup> The records identified below the summary included Carpenter's medical and other health care records, legal records, accounting records, federal and state taxes, financial records, and all other records bearing on any aspect of Carpenter's physical and mental health and financial status.

(4) It is necessary to conserve or administer the estate of a decedent before letters can be issued to a personal representative.

(5) Circumstances provided for in s. 867.05(5) and (6) exist.

(6) A cause of action exists for or against the decedent or the decedent's estate and that it is necessary that some act be performed before letters can be issued to a personal representative.

(7) Other circumstances exist which in the discretion of the court require the appointment of a special administrator.

Because the appointment of a special administrator is permissive rather than mandatory, we review the circuit court's decision for an erroneous exercise of discretion. *See* WIS. STAT. § 867.07 (court "may" appoint a special administrator); *Smiljanic v. Niedermeyer*, 2007 WI App 182, ¶12, 304 Wis. 2d 197, 737 N.W.2d 436 (word "may" in a statute connotes that court is to exercise discretion in ordering relief sought). We generally look for reasons to sustain a discretionary determination. *Welytok v. Ziolkowski*, 2008 WI App 67, ¶24, 312 Wis. 2d 435, 752 N.W.2d 359.

As noted, the circuit court dismissed McAllister's petition for the appointment of a special administrator. It did so because it deemed the petition inadequate. The court explained, "the reasons claimed in the Petition as a basis for requiring the appointment of a Special Administrator are pure speculation and conjecture."

Like the circuit court, we conclude that the reasons claimed in the petition are speculative, as they indicate, either explicitly or implicitly, that further discovery is required. It is not the role of the special administrator to conduct such discovery and investigate whether claims should be filed on behalf of the decedent's estate. *See Hoberg v. Berth*, 157 Wis. 2d 717, 460 N.W.2d 436 (rejecting the argument that WIS. STAT. § 867.07 authorizes administrators to take depositions prior to the commencement of an action solely for purpose of establishing

grounds for a viable claim on the estate's behalf). Because the petition envisions foisting upon the special administrator responsibilities not contemplated by statute, we are satisfied that the circuit court properly dismissed it.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*