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DISTRICT III

March 27, 2018

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

2017AP368

Kyle J. Worm v. Estate of Gerald W. Worm (L. C. No. 2016IN14)

Before Stark, P.J., Hruz and Seidl, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Kyle Worm and Eric Worm appeal an order denying their motion for reconsideration of an order that denied their claim against the estate of their father, Gerald Worm. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. We dismiss the appeal for lack of jurisdiction. *See* WIS. STAT. RULE 809.21 (2015-16).¹

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

On February 23, 2017, Kyle and Eric filed a notice of appeal from a November 28, 2016 order denying a motion for reconsideration. On August 1, 2016, the circuit court had entered a final order denying their claim against Gerald's estate. Kyle and Eric did not timely appeal from that order. *See* WIS. STAT. § 808.04(1) (in a civil matter in which no notice of entry of judgment is given, a notice of appeal must be filed within ninety days after entry of the judgment or order appealed from); *see also* WIS. STAT. RULE 809.10(1)(e) (this court lacks jurisdiction if notice of appeal is not timely filed).

Although the notice of appeal was timely filed as to the November 28, 2016 order denying reconsideration, an appeal cannot be taken from an order denying a motion for reconsideration that presents the same issues as those determined in the order sought to be reconsidered. *See Silvertown Enters., Inc. v. General Cas. Co.*, 143 Wis. 2d 661, 665, 422 N.W.2d 154 (Ct. App. 1988). The concern is that a reconsideration motion should not be used to extend the time to appeal from a judgment or order when that time has expired. *Id.*; *see also Ver Hagen v. Gibbons*, 55 Wis. 2d 21, 25-26, 197 N.W.2d 752 (1972). Because it was unclear from the record whether the motion for reconsideration presented issues that could have been raised in an appeal from the August 1, 2016 order, we directed the parties to address jurisdiction as the first issue in their appellate briefs. Whether a party's motion for reconsideration raised a new issue "presents a question of law that this court reviews de novo." *State v. Edwards*, 2003 WI 68, ¶7, 262 Wis. 2d 448, 665 N.W.2d 136.

Kyle and Eric are the biological children of Gerald and Sue Worm. The couple divorced in April 2007. In that contested divorce proceeding, the circuit court awarded hunting land to Gerald, noting the following restrictions:

I am going to limit [Gerald]’s ability to dispose of that property. If he wishes to sell that property, he needs to inform Ms. Worm of that fact, giving her right of first refusal for purchasing same. If he intends to gift the property or convey the property in any manner, other than a sale, that may only be to a son that is common with Mr. Worm and Ms. Worm.

A quit claim deed from Sue to Gerald memorialized the court’s stated restrictions. With specific respect to gifting or conveying the property, the quit claim deed provided: “If the Grantee intends to gift or convey the property in any manner other than an arm’s length, good faith sale transaction to a third party, the gift may only be to a son(s) that is (are) the biological child of the Grantor and the Grantee.”

Gerald died on January 4, 2016. In his Last Will and Testament, which had been drafted in 2013, Gerald made no specific disposition of the hunting land and left the residue of his estate to Danette Thieme, the mother of Gerald’s two daughters. Kyle and Eric filed a claim against the Estate, alleging they were entitled to ownership of the hunting land by virtue of the 2006 divorce judgment. At a hearing on their claim, the circuit court judge who presided over the divorce action testified that he placed restrictions on Gerald’s disposition of the hunting land so the children Gerald shared with Sue “would have some protection.” The judge, however, added that he “certainly didn’t consider anything beyond ... Mr. Worm’s lifetime[.]” The circuit court denied Kyle and Eric’s claim, concluding that the restrictions imposed by the divorce judgment did not extend beyond Gerald’s life.

Kyle and Eric moved for reconsideration, arguing that the restrictions included in the quit claim deed transferring Sue’s interest to Gerald continued after his death. Strictly construing the language of the quit claim deed, the circuit court determined that Gerald could neither “gift” nor “convey” the property after his death. The court therefore denied the motion for reconsideration.

Kyle and Eric claim we have jurisdiction to review the order denying their motion for reconsideration because they raised “new issues.” Kyle and Eric concede that the issue before the circuit court in both hearings addressed the restriction on the hunting land, but they contend the two hearings involved legally distinct topics. Specifically, they claim that at the original hearing on their claim against the Estate, the circuit court considered only the restrictions of the divorce judgment, while the reconsideration motion asked the circuit court to consider the restriction contained in the quit claim deed.

We are not persuaded. The legal issue presented to the circuit court both initially and on reconsideration was identical: Did Gerald have the right via testamentary bequest to dispose of the hunting land awarded to him in the divorce judgment to someone other than his sons. The circuit court considered the language of the divorce judgment, along with the divorce judge’s stated intention for that language, before denying Kyle and Eric’s claim against the Estate. As noted above, that language had been incorporated into a quit claim deed—the very deed the circuit court was asked to consider on reconsideration. The request to reconsider the impact of the same language, parroted in the quit claim deed, does not present a new issue. Accordingly, we lack jurisdiction to review the order denying reconsideration. *See Silvertown Enters.*, 143 Wis. 2d at 665. Because we lack jurisdiction to review the only order from which Kyle and Eric timely appealed, we must dismiss this appeal.

Upon the foregoing,

IT IS ORDERED that the appeal is dismissed for lack of jurisdiction.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals