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DISTRICT II

April 12, 2023

To:

Hon. Gary R. Sharpe
Circuit Court Judge
Electronic Notice

William C. Williams
Electronic Notice

Brenda L. Woelfel
Register in Probate
Fond du Lac County Courthouse
Electronic Notice

Jon Mark
228 S. Military Rd., Ste. 205
Fond du Lac, WI 54935

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

2020AP1674

Jon Mark v. The Estate of Joseph Mark (L.C. #2018PR33)

Before Gundrum, P.J., Neubauer and Grogan, 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).

Jon Mark appeals pro se from an order declining to include a parcel of real property in the probate estate of his father, Joseph Mark, and from an order denying his motion for reconsideration. Based upon 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 (2021-22).¹ For the reasons that follow, we affirm.

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

Joseph died intestate in August 2018. He was survived by five adult children, including the appellant. The estate was admitted to probate, and Amy Resop, Joseph's daughter, was appointed as personal representative. The probate estate did not include real property that passed to Amy by virtue of a transfer on death (TOD) deed prepared by Joseph and his attorney on April 20, 2016, and recorded by the Register of Deeds on April 27, 2016.

Though executed and recorded in 2016, the TOD deed's dates of execution and notarization were written as "4/20/20." Jon moved the circuit court to probate the TOD property, arguing that the handwritten dates evinced Joseph's intent to "postdate [the TOD deed] to 2020."

At an evidentiary hearing on his motion, Jon confirmed that he was "solely relying on the deed" to prove his father's intent:

I believe my strongest argument ... is based on the date itself. If you look at the year '20, you will notice part of the two, you will see that it appears to be a number one written prior to the number written two. So, I believe Joseph Mark knew the correct year, but I believe his intent was to postdate it to 2020.

Wanting to make sure that it understood Jon's theory, the circuit court summarized it as follows:

So ... your position is that he started to identify the correct year 2016 with a one and then he was going [to] put a six, but instead he changed it and put a two, and your contention is that that means he didn't intend [for] this deed to be effective until a date on April 20, 2020?

Jon responded: "That is correct."

Over Jon's objection, the Estate of Joseph Mark (the Estate) was permitted to call the notary public as a witness. She testified that Joseph signed the TOD deed in her presence, at his lawyer's office, on April 20, 2016. She further testified that she, not Joseph, wrote "4/20/20" on

both the execution and notarization lines of the TOD deed and that she wrote the wrong year inadvertently. She explained that it was not uncommon for a client to forget to fill in the date. When that happened, she would fill it in.

The circuit court credited the notary's testimony and found that the incorrect dates on the TOD deed constituted scrivener's errors and did not manifest Joseph's intent to postdate the TOD deed. As such, the scrivener's errors did not invalidate the duly recorded TOD deed. The court denied Jon's motion to include the TOD property in the probate estate. By separate order, it also denied Jon's motion for reconsideration.²

On appeal, Jon maintains that his father intended to make the TOD deed effective as of April 2020 rather than April 2016. He attempts to poke holes in the notary's testimony, asserting that it consisted of "perjury and fraud." Jon misunderstands our standard of review.

"When the [circuit] court acts as the finder of fact, it is the ultimate arbiter of the credibility of the witnesses and of the weight to be given to each witness's testimony." *Lessor v. Wangelin*, 221 Wis. 2d 659, 665, 586 N.W.2d 1 (Ct. App. 1998). We must uphold the circuit court's findings of fact unless they are clearly erroneous. *See* WIS. STAT. § 805.17(2). Here, the court credited the notary's testimony and found that she, not Joseph, filled in the incorrect dates and that her errors were inadvertent. These facts are determinative and supported by the record.

Jon argues that even if the notary filled in the dates, the circuit court erred because Joseph might have asked the notary to postdate the TOD deed. Jon goes a step further and asserts that,

² Though Jon labeled his subsequent motion as one seeking "relief from judgment and order," the circuit court properly construed it as a motion for reconsideration.

even if the incorrect dates were mere scrivener's errors, we should infer that Joseph intended the TOD deed's effective date to be in April 2020 because he did not correct the scrivener's errors during the two years between the deed's recording and his death.

We reject Jon's arguments as wholly speculative. As stated by the circuit court in its order denying reconsideration, there is no evidence in the record that Joseph even noticed the mistake, "and nothing to support the assertion that the [decedent] didn't correct the deed because he intended that the transfer ... not take effect" until 2020. Any inference to the contrary is pure conjecture, and regardless, we must accept the reasonable inference drawn by the factfinding court. See *Siker v. Siker*, 225 Wis. 2d 522, 528, 593 N.W.2d 830 (Ct. App. 1999). To the extent the question of Joseph's intent is a legal one, we conclude that the court properly ruled in the Estate's favor. There is simply no evidence supporting an inference that Joseph intended to postdate the TOD deed or postpone its effective date.

Finally, we reject Jon's arguments that the circuit court should have disallowed the notary's testimony and that it erred in denying his motion for reconsideration. These are both discretionary determinations; the record shows that the court properly exercised its discretion.³

³ To the extent we do not address one of Jon's arguments, that argument is deemed rejected. See *State v. Waste Mgmt. of Wis., Inc.*, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978).

Upon the foregoing reasons,

IT IS ORDERED that the orders of the circuit court are summarily affirmed. *See* WIS. STAT. RULE 809.21.

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

Sheila T. Reiff
Clerk of Court of Appeals