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DISTRICT III

March 5, 2024

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Irrevocable Chrystyl Harves Trust
N3438 Woodlawn Road
Kennan, WI 54537

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

2022AP1770

Chrystyl Harves v. Irrevocable Chrystyl Harves Trust
(L. C. No. 2022PR4)

Before Stark, P.J., Hruz and Gill, 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).

Chrystyl Harves, the sole beneficiary of the Irrevocable Chrystyl Harves Trust, appeals from a circuit court order dismissing her petition claiming numerous “breaches of trust” and seeking the removal and replacement of the trustee and successor trustee of the Trust, an accounting, the return of Trust assets, and the payment of certain Trust liabilities by the trustee. Harves argues that the court sua sponte dismissed her petition on the merits in violation of her procedural due process rights by failing to provide her with notice and an opportunity to be heard on the petition’s dismissal. 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 We summarily reverse and remand to the circuit court to reinstate the petition and conduct further proceedings on Harves’ claims.²

The Trust was created by John B. Threlfall (the grantor) in 2003.³ Anna Threlfall—the grantor’s daughter and a former attorney, who voluntarily gave up her license to practice law in this state—has been the trustee since its inception, and Threlfall’s significant other, Richard Baum, is the successor trustee. The Trust’s stated purpose is as follows: “[T]o help provide for [Harves’] shelter and for her medical and dental care when such is not available through insurance or other third party means, and to provide for the management and distribution of the [T]rust principal and income.” Payments and investments were to be made “in the sole discretion of the [t]rustee,” and the trustee was not to “make any distributions directly to [Harves] unless the [t]rustee has no other way of making the distribution.”

On January 7, 2022, Harves filed her nine-count petition, alleging, among other things, numerous breaches of trust and seeking removal and replacement of the trustee and successor trustee.⁴ Harves sought to appoint a different trustee.

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

² We originally decided this case on February 13, 2024. After our decision was released, Anna Threlfall filed a letter with this court identifying two “errors of fact that must be corrected,” which were unrelated to our conclusion in the case. Accordingly, we withdrew our opinion and order to make those corrections. This modified opinion follows.

³ According to the record on appeal, the grantor’s son, John H. Threlfall, is Harves’ “former partner and [her child’s] father.”

⁴ For ease of reading, we will refer to the respondents in this case—the Trust, Threlfall, and Baum—collectively as the Trust.

At the time of the petition, Harves was seventy years old and had “long been severely disabled” by end-stage primary progressive multiple sclerosis, degenerative joint disease, and spinal stenosis. According to the petition, Harves had “very little savings or valuable assets”; “has had little regular income since retiring for medical reasons in 2014”; and “is and has been ‘housing insecure’ since about March 2014, having experienced homelessness on several occasions throughout this period.”

Harves claimed that Threlfall refused to make payments from the Trust for Harves’ housing and medical assistance. According to Harves, “Threlfall’s denials of payments for Ms. Harves’s medical and housing assistance are unmoored from any reasonable basis and are vindictive.” Further, Harves alleged that “Threlfall has mismanaged the Trust’s property, enriched herself, and violated her fiduciary duties.”

After filing the petition, Harves filed a motion to prohibit Threlfall from using Trust property to pay costs and attorney fees, which the circuit court granted. Thereafter, Harves alleged that Threlfall paid attorney fees from the Trust in violation of the court’s injunction. As a result, Harves sought sanctions against Threlfall for this purported violation (the sanctions motion). Harves also had become aware, after the petition was filed, of investments Threlfall made with the Trust’s property, which Harves called “destructive” and “reckless.” Harves asserted these investments as the factual basis for a motion to remove Threlfall as trustee (the removal motion). The sanctions motion and the removal motion were filed together, and the claims contained in the motions were all related to Threlfall’s post-petition actions. For her part, Threlfall also filed a motion for payment of her attorney fees and costs incurred in this action from the Trust (the fee allowance motion).

The circuit court held an evidentiary hearing on the motions. It is undisputed that the parties and the court were clear regarding the narrow scope of the hearing, which was to address only the sanctions, the removal, and the fee allowance motions. Nevertheless, the court later issued its written decision and order dismissing Harves' petition in its entirety, on the merits. The court's decision denied both Harves' motions for sanctions and for removal, and it granted Threlfall's fee allowance motion. As a result, the court determined that "since there is no basis to grant Ms. Harves relief on her motions, the [c]ourt would not be able to grant such relief on her [p]etition in general." It ordered her petition dismissed. Harves appeals.⁵

We decide this case on very narrow grounds. On appeal, Harves claims that the circuit court violated her procedural due process rights when it sua sponte dismissed her petition on the merits. "The fundamental requirements of procedural due process are notice and an opportunity to be heard." *Northbrook Wis., LLC v. City of Niagara*, 2014 WI App 22, ¶21, 352 Wis. 2d 657, 843 N.W.2d 851. Here, the record is clear that all the parties understood the limited scope of the evidentiary hearing. There is nothing in the record demonstrating that Harves was on notice that all the claims in the petition were being addressed at the hearing, would be addressed in the court's order, or that the court was considering dismissing some or all of the petition's claims. Thus, the court's order exceeded the scope of the evidentiary hearing.

Importantly, there was also no motion for summary judgment, no motion to dismiss, or any other dispositive motion pending before the circuit court at the time of the hearing.

⁵ The Trust chose not to file a response brief. After being notified of its failure to file a brief and the potential consequences of not doing so, Threlfall submitted a letter to this court explaining that she decided that the cost to respond to this appeal "was an excessive and risky use of [T]rust funds" and that she did not "wish to risk having to pay for the brief out of [her] own funds." Harves, therefore, did not file a reply brief.

Although the court was not clear as to the exact basis for dismissal—i.e., the court did not state that it was granting summary judgment or otherwise cite a statutory or common law basis for dismissing the petition—we agree with Harves that given the court’s statement that it had “considered all such record documentation and evidence,” the court appears to have sua sponte granted summary judgment to the Trust. See WIS. STAT. § 802.08(2)-(3); see also *Larry v. Harris*, 2008 WI 81, ¶¶41, 44, 311 Wis. 2d 326, 752 N.W.2d 279 (circuit courts have authority to sua sponte grant summary judgment, subject to due process requirements); *State ex rel. Schatz v. McCaughtry*, 2003 WI 80, ¶¶19-30, 263 Wis. 2d 83, 664 N.W.2d 596 (discussing due process rights pertaining to sua sponte dismissals).

To raise and grant a summary judgment on its own motion, a circuit court must comply with the twenty-day notice provision contained in WIS. STAT. § 802.08(2). *Larry*, 311 Wis. 2d 326, ¶40. As pertinent to this appeal, that statute provides: “Unless earlier times are specified in the scheduling order, the motion [for summary judgment] shall be served at least 20 days before the time fixed for the hearing and the adverse party shall serve opposing affidavits, if any, at least 5 days before the time fixed for the hearing.” Sec. 802.08(2). “A court’s sua sponte grant of summary judgment without complying with the statutory prior notice requirement deprives parties of an opportunity to bring forth all their evidence.” *Larry*, 311 Wis. 2d 326, ¶43.

Here, the circuit court did not provide the parties with the statutorily required twenty-days’ notice of its motion under WIS. STAT. § 802.08(2), nor did the court enter a scheduling order specifying a shorter time period, before it sua sponte granted summary judgment to the Trust and dismissed Harves’ petition. Rather, the court dismissed Harves’ petition without prior notice, which meant that Harves was not made aware that she needed to present all of her evidence in support of her petition at the motion hearing. Accordingly, the

court erred by granting summary judgment to the Trust. We therefore reverse that portion of the court's order dismissing Harves' petition and remand for further proceedings.

Upon the foregoing,

IT IS ORDERED that the order for dismissal of Harves' petition is summarily reversed and the cause is remanded for further proceedings consistent with this opinion pursuant to WIS. STAT. RULE 809.21.

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

Samuel A. Christensen
Clerk of Court of Appeals