

IN THE SUPREME COURT OF THE STATE OF MONTANA
NO. DA -21-0012

IN THE MATTER OF THE ESTATE OF)
DOUGLAS C. DOWER,)
))
Deceased,)
))
LINDA GAYLENE DOWER,)
))
Appellant,)
))
v.)
))
JAYNE LUX,)
Personal Representative,)
))
Appellee,)
)

On Appeal from the Montana Eighth Judicial District Court,
Cascade County, Montana, Cause No. BDP-20-003

APPELLEE’S BRIEF IN RESPONSE TO AMICUS CURIAE

APPEARANCES:

LAURA E. WALKER
HEATHER M. STARNES
Jardine, Stephenson, Blewett & Weaver, P.C.
300 Central Avenue, 7th Floor
P.O. Box 2269
Great Falls, MT 59401

Attorneys for Appellant

LIZA L. DENNEHY
Frank J. Joseph PC
2801 S. Montana
Butte, MT 59701
(406) 782-0484
ldennehypllc@gmail.com

Attorney for Appellee

JUSTIN M. BRYAN
Bryan Law Firm, PC
11 East Main Street, Suite D
P.O. Box 1371
Bozeman, MT 59771
justin@bryanlawpc.com

DREW MOORE GAERTNER
McLean Younkin & Willett, PLLC
2066 Stadium Drive, Suite 101
Bozeman, MT 59715
dmooregaertner@bozeman.legal

MOLLY S. CONSIDINE
Patten, Peterman, Bekkedahl & Green, PLLC
2817 2nd Ave North, Ste 300
Billings, MT 59101
mconsidine@ppbglaw.com
State Bar of Montana's BETTR Section

TABLE OF CONTENTS

TABLE OF AUTHORITIES i
STATEMENT OF THE ISSUES 1
STATEMENT OF THE CASE..... 1
STANDARD OF REVIEW 1
ARGUMENT 2
CONCLUSION..... 3
CERTIFICATE OF COMPLIANCE 4
CERTIFICATE OF MAILING..... 5

TABLE OF AUTHORITIES

Cases

In re Eggebrecht, 2000 MT 189, ¶ 18, 300 Mont. 409, 4 P.3d 1207 2
In re Estate of Berthot, 2002 MT 277, ¶ 21, 312 Mont. 366, 59 P.3d 1080..... 2
In re Estate of Bolinger, 1998 MT 303, ¶ 29, 292 Mont. 97, 971 P.2d 767..... 2

Statutes

Mont. Code Ann. § 72-3-1104..... 3
Mont. Code Ann. § 72-3-901 2
Mont. Code Ann. § 72-6-112..... 2

STATEMENT OF THE ISSUES

1. Did the District Court correctly conclude that assets in a revocable trust at decedent's death are nonprobate assets and only available as a source of funds to satisfy statutory allowances when and to the extent the probate estate is insufficient?
2. Did the District Court correctly conclude that decedent's probate estate was sufficient to satisfy Linda Dower's statutory allowances?

STATEMENT OF THE CASE

Appellee, Jayne Dower Lux, Personal Representative of the Estate of Douglas C. Dower ("Jayne"), relies upon the procedural history and statement of facts set forth in the Statement of the Case and Statement of the Facts in her Response Brief filed with this Court May 4, 2021, as supplemented herein.

On or about June 23, 2021, this Court invited the State Bar of Montana's Business, Estates, Trusts, Tax and Real Property Law Section ("BETTR Section") to file an amicus brief in order to inform its consideration of this case and ordered any brief filed to be filed within thirty (30) days of the date of its Order. Order dated June 23, 2021, at 1. Accordingly, the BETTR Section filed its Amicus Brief with this Court July 23, 2021.

This brief is filed by the Appellee in response.

STANDARD OF REVIEW

The parties agree that this Montana Supreme Court reviews a district court's findings of fact to determine whether those findings are clearly erroneous. *In re*

Estate of Berthot, 2002 MT 277, ¶ 21, 312 Mont. 366, 59 P.3d 1080 (citing *In re Eggebrecht*, 2000 MT 189, ¶ 18, 300 Mont. 409, 4 P.3d 1207; *In re Estate of Bolinger*, 1998 MT 303, ¶ 29, 292 Mont. 97, 971 P.2d 767). The parties further agree that the Montana Supreme Court reviews a district court's conclusions of law to determine whether that court's interpretation of the law is correct. *Berthot*, ¶ 21.

ARGUMENT

The Amici's analysis concludes, as a matter of law, that assets in a revocable trust at decedent's death are nonprobate assets and only available as a source of funds to satisfy the statutory allowances, homestead and family allowance, when and to the extent probate assets are insufficient, as provided by Mont. Code Ann. § 72-6-112. *See* Amicus Br., at 7-16. Additionally, and for all the reasons stated therein, the BETTR Section's analysis concludes that Linda Dower's specific devises must abate to satisfy her rights to the homestead allowance, family allowance, and exempt property in accordance with Mont. Code Ann. § 72-3-901, and as a result, that the decedent's probate estate is sufficient to satisfy Linda Dower's statutory allowances. *See* Amicus Br., at 5, 12-19.

We agree with the Amici's analysis and hereby incorporate it by reference into our arguments as set forth in Appellee's Response Brief filed May 4, 2021 on those same issues, as if the Amici's analysis were fully set forth therein.

CONCLUSION

For the reasons set forth herein as well as all those stated in our Response Brief filed May 4, 2021, Jayne Dower Lux, Personal Representative of the Estate of Douglas C. Dower, respectfully requests that the District Court's Order granting the Estate's Motion for Summary Judgment and finding the Estate shall be subject to summary administration pursuant to Mont. Code Ann. § 72-3-1104 be affirmed.

Dated this 9th day of August 2021.

By: /s/ Liza L. Dennehy
Liza L. Dennehy
Attorney for the Appellee

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this Brief is printed proportionately spaced Times New Roman non-script text typeface of 14 points, is double spaced except for quoted and indented material; has margins of one inch on the top, bottom, right and left sides and is bound with a salmon cover. The Brief is printed on quality, opaque, unglazed, recycled paper and is 8½ x 11 inches in size. The word count calculated by Microsoft Word 2019 totals 557 words excluding table of contents, table of authorities, appendix, certificate of compliance and certificate of mailing.

Dated this 9th day of August, 2021.

By: /s/ Liza L. Dennehy
LIZA L. DENNEHY
Attorney for Estate and Appellee

CERTIFICATE OF MAILING

I, the undersigned, hereby certify that I have filed a true and accurate copy of the foregoing Response Brief with the Clerk of the Montana Supreme Court and that I have served true and accurate copies of the foregoing upon each attorney of record, via e-pass electronically filing on this 9th day of August 2021, to the following addressed as follows:

Laura E. Walker
Heather M. Starnes
Jardine, Stephenson, Blewett & Weaver, P.C.
300 Central Avenue, 7th Floor
P.O. Box 2269
Great Falls, MT 59401
Attorneys for Appellant

Molly S. Considine
Patten, Peterman, Bekkedahl & Green, PLLC
2817 2nd Ave North, Ste 300
Billings, MT 59101
State Bar of Montana's BETTR Section

/s/ Liza L. Dennehy
LIZA L. DENNEHY
Attorney for Estate and Appellee

CERTIFICATE OF SERVICE

I, Liza L. Dennehy, hereby certify that I have served true and accurate copies of the foregoing Brief - Supplemental to the following on 08-09-2021:

Laura E. Walker-Livergood (Attorney)
300 Central Avenue, 7th Floor U.S. Bank Building P.O. Box 2269
GREAT FALLS MT 59401
Representing: Linda Gaylene Dower
Service Method: eService

Heather M. Starnes (Attorney)
P.O. Box 2269
Great Falls MT 59403
Representing: Linda Gaylene Dower
Service Method: eService

Francis Joel Joseph (Attorney)
2801 South Montana Street
Butte MT 59701
Representing: Jayne Lux
Service Method: eService

Molly S. Considine (Attorney)
2817 2nd Ave. North #300
Billings MT 59101
Representing: State Bar of Montana's Business, Estates, Trust, Tax and Real Estate Law Section
Service Method: eService

Electronically Signed By: Liza L. Dennehy
Dated: 08-09-2021