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IN THE SUPREME COURT OF THE STATE OF MONTANA
Cause No. DA-24-0315

IN RE THE MATTER OF THE ESTATE
OF: RICHARD EDWARD PAUL,

Deceased.

APPELLEE'S RESPONSE BRIEF

On Appeal from the Eighth Judicial District Court
Cascade County, Montana
Cause No. BDP-7-2022-0286
Honorable Elizabeth Best Presiding

APPEARANCES

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2. STATEMENT OF THE CASE AND THE FACTS

This case arises out of the administration of an intestate estate. The issue before the Court is whether the district court erred in issuing the April 22, 2024 Order Approving the Sale of Real Property.

The intestate estate of Richard Edward Paul was initiated by the Application for Informal Appointment of Personal Representative in Intestacy filed by Richann L. Ray. Doc # 1. Consents to the Appointment of Richann L. Ray were signed by her three sisters, Dawn M. Paul Charron, Appellant, Shelbi L. Paul and Danita J Paul and were attached as Exhibits to the Application. Doc# 1.

Shelbi L. Paul filed Motion for Temporary Restraining Order on January 19, 2023. Doc #5. After hearing on January 25, 2023, Shelbi L. Paul 's Motion was denied. Doc# 9. Shelbi L. Paul filed a Motion to Enforce Settlement Agreement on April 27, 2023. Doc #12. Shelbi L. Paul's Motion to Enforce Settlement Agreement was denied June 1, 2023. Doc #17.

On October 13, 2023, the disagreements of the parties was mediated by Hon. Gregory G. Pinski (ret). See Affidavit of Richann Ray para 3, Exhibit E to Doc 27. The mediation resulted in a General Release and Mediated Settlement Agreement (Agreement). Exhibit D to Doc 28. The result of the mediation was that the cabin in Lincoln would be sold. See Affidavit of Richann Ray para 4,

Exhibit E to Doc 27.

The Agreement provided an orderly method to resolve competitive bids by the heirs. Exhibit D, para 1(A) to Doc 28. The Agreement provided a 30 day window for heirs to submit bids after an appraisal was obtained. Exhibit D, para 1(A) to Doc 28. None of the heirs submitted a bid pursuant to the terms of the Agreement. See Affidavit of Richann Ray para 6, Exhibit E to Doc 27.

When there was no sale pursuant to the terms of the Agreement, Richann L. Ray listed the property for sale on the open market. See Affidavit of Richann Ray para 7, Exhibit E to Doc 27. The property was listed for sale for \$243,000 on January 2, 2024, with Becky Garland of Action Realty in Lincoln. See Affidavit of Richann Ray para 10, Exhibit E to Doc 27.

There are significant structural and other problems with the house that effect its value. Affidavit of Richann Ray para 8, Exhibit E to Doc 27. The costs to repair the deficiencies on the structural engineer's report is \$127,900. Affidavit of Richann Ray para 9, Exhibit E to Doc 27. The Engineer's Report and Repair Estimates were attached as Exhibits to the Motion. Affidavit of Richann Ray, para 9, Exhibit E to Doc 27.

The listing price was set at \$234,000, which was the value placed upon it by the property appraiser that was hired during the mediation process. Affidavit of

Richann Ray para 11, Exhibit E to Doc 27. There were numerous inquiries and showings of the property. Affidavit of Richann Ray para 12, Exhibit E to Doc 27. However, due to the numerous structural problems and significant costs of repair, there was only one offer to purchase the property from a third party which was later withdrawn. Affidavit of Richann Ray para 12, Exhibit E to Doc 27.

At the time Richann filed the Motion to Approve the Sale of Real Property, the cabin had been on the market for three and one-half months. Affidavit of Richann Ray para 15, Exhibit E to Doc 27. The lack of interest in the cabin is reflective of the poor condition of the property and the costs of making all the necessary repairs. Affidavit of Richann Ray para 15, Exhibit E to Doc 27. The cabin is still listed for sale, however, the offer from the three sisters is the only remaining offer to purchase the property. Affidavit of Richann Ray para 14, Exhibit E to Doc 27.

Three sisters and Heirs of the Estate, Richann L Ray, Dawn M Paul Charron and Danita J Paul made an offer to purchase the property from the Estate for \$106,100. Affidavit of Richann Ray para 13, Exhibit E to Doc 27. The offer from the sisters represented the appraised value of the property of \$234,000 less the costs of repairs of \$127,900. Affidavit of Richann Ray para 13, Exhibit E to Doc 27. Richann Ray represented to the court that she believed that it is in the best

interest of the Estate to allow the three sisters to purchase the property and buy out Shelbi Paul for \$26,525. Affidavit of Richann Ray para 16, Exhibit E to Doc 27.

On March 23, 2024, Richann Ray, the Personal Representative filed a Motion to Approve the Sale of Real Property with Exhibits A through D in support. See Doc 22. Exhibit A is the National Property Inspections report identifying significant problems with the cabin effecting its value. See Exhibit A to Doc 22. Exhibits B and C, are the Delta Engineering P.C. assessment identifying significant structural and foundational problems effecting the value of the cabin. See Exhibit B and C to Doc 22. Exhibit D, is the Jack of All Contracting project bid indicating the cost of the necessary cabin repairs is \$127,900.

On April 10, 2024, Appellant, Shelbi Paul filed an Objection to the Motion to approve sale of Real Property. Doc 25. On April 18, 2024, Richann Ray filed an Amended Reply brief. Doc 27 which included Exhibit E, the Affidavit of Richann Ray referenced above.

On April 22, 2024, Judge Elizabeth Best issued an Order Approving the Sale of Real Property at Doc 30 and made the following Findings Of Fact:

1. The Heirs to the Estate of Richard Edward Paul entered into a General Release and Mediated Settlement Agreement "Agreement" dated October 13, 2023.
2. The Agreement resolved all issues between the parties and released all current and future claims concerning the Estate administration.

3. The Agreement resolved the issue of the real property by stipulating that the property would be sold to either one or more of the Heirs or a third party.
4. The only viable offer to purchase the real property of the Estate is the offer by Richann L Ray, Dawn M Paul Charron, and Danita J Paul to purchase the property and buy out Shelbi Paul's interest in the property.
5. The offer to purchase the real property for \$106,100, which represents the appraised value of the property of \$234,000 less the costs of repairs of \$127,900 is reasonable and in the best interest of the Estate.

Based upon the Findings of Fact the court Approved the Motion to Sell the Real Property of the Estate and Ordered:

1. RICHANN L. RAY, is authorized to sell the real property to Richann L Ray, Dawn M Paul Charron, and Danita J Paul for the purchase price of \$106,100, as follows:
 - a. At closing, the escrow instruction shall provide that, Richann L Ray, Dawn M Paul Charron, and Danita J Paul shall each receive a credit of \$26,525 for their undivided 25% interest as an heir in the real property.
 - b. At closing, the escrow instruction shall provide that, Richann L Ray, Dawn M Paul Charron, and Danita J Paul shall pay to Shelbi Paul \$26,525 for her undivided 25% interest as an heir in the real property.

On May 7, 2024, Appellant, Shelbi Paul filed a Motion for Leave to File at Doc 31 that was denied by a May 7, 2024, Order at Doc 32. On May 10, 2024, Appellant, Shelbi Paul filed a Motion for Leave to file Motion to Alter Amend or Reconsider at Doc 33 and a Motion to Alter, Amend or Reconsider the Findings of Fact at Doc 34. On May 13, 2024, Judge Elizabeth Best issued an Order Denying

the Motion for Leave to File and Motion to Amend at Doc 35. On May 20, 2024, Appellant, Shelbi Paul filed her Notice of Appeal.

3. STANDARD OF REVIEW

This Court reviews the district court's "findings of fact for clear error, conclusions of law de novo, discretionary rulings for an abuse of discretion, and mixed questions of law and fact de novo." *Alto v. Jake Holdings, LLC v. Donham*, 2017 MT 297, ¶ 14, 389 Mont. 435, 406 P.3d 937; see also *Stanley v. Lemire*, 2006 MT 34, ¶ 26, 334 Mont. 489, 148 P.3d 643. "A finding of fact is clearly erroneous if it is not supported by substantial evidence, if the court misapprehended the effect of the evidence or if, upon reviewing the record, this Court is left with the definite and firm conviction that the district court made a mistake." *In re S.T.*, 2008 MT 19, ¶ 8, 341 Mont. 176, 176 P.3d 1054.

We review district court findings of fact only for clear error, and discretionary estate administration matters only for an abuse of discretion. *Ayers*, ¶ 12; *Barber*, 216 Mont. at 27-28, 699 P.2d at 91. An abuse of discretion occurs only if a court exercises granted discretion based on a clearly erroneous finding of material fact, an erroneous conclusion or application of law, or otherwise acts arbitrarily, without conscientious judgment or in excess of the bounds of reason, resulting in substantial injustice. *In re Marriage of Bessette*, 2019 MT 35, ¶ 13,

394 Mont. 262, 434 P.3d 894; *Larson v. State*, 2019 MT 28, ¶ 16, 394 Mont. 167, 434 P.3d 241; *City of Missoula v. Mountain Water Co.*, 2018 MT 139, ¶ 9, 391 Mont. 422, 419 P.3d 685.

"Additionally, in determining whether the trial court's findings are supported by substantial credible evidence, this Court must view the evidence in the light most favorable to the prevailing party. *Roberts v. Mission Valley Concrete Indus.* (1986), 222 Mont. 268, 271, 721 P.2d 355, 357." *Norwood v. Service Distributing, Inc.*, 2000 MT 4, 994 P.2d 25, 297 Mont. 473 (Mont. 2000).

4. SUMMARY OF THE ARGUMENT

In support of her Motion to Approve the Sale of Real Property the personal representative provided an Affidavit and Exhibits which provided a factual basis in support of the Motion. In her Response Brief at doc 25, Appellant, Shelbi Paul, provided a factual argument in support of her Objection. Appellant used her brief primarily to re-litigate issues that had been resolved at mediation. The terms of the Mediated Agreement did not apply to the sale of the cabin after the 30 day window lapsed. The court's findings of fact were based upon substantial credible evidence and the Order approving the sale was within Judge Best's discretion.

5. ARGUMENT

1. The district court properly granted the Motion to approve the sale of

the cabin.

The District Court's findings of Fact were supported by substantial evidence which included the affidavit of Richann Ray (Richann) and exhibits concerning the cabin's structural problems and valuation basis for the sale. The Court had the opportunity to review and consider the factual basis for Shelbi Paul's Objection. After reviewing the facts and arguments presented by both sides, the Court was within its discretion to approve the sale of the real property.

A. The district court order was supported by the facts and the law.

Richann was appointed Personal Representative by the consent of her siblings, including, Appellant, Shelbi Paul. As Personal Representative, Richann was required to "proceed expeditiously" with the settlement of the estate and could "invoke the jurisdiction of the court" "to resolve questions concerning the administration of the estate." See § 72-3-605, MCA. Richann also had the authority to sell any real or personal property of the estate to any interest for cash, credit or part cash and part credit. See § 72-3-613(23), MCA.

The parties entered in to a Mediated Agreement that provided an orderly method to sell the cabin property and resolved all other claims and issues in the estate. None of the heirs were able make an offer within the 30 day time period to

purchase the property pursuant to the terms of the Agreement. When there was no sale pursuant to the Agreement, Richann listed the property for sale with a real estate agent, on the open market for the \$234,000 appraised value.

After 3 and ½ months on the open market there were no offers to purchase the property. Richann obtained a property inspection and engineer's report which indicated there were significant structural and other problems with the cabin. Richann obtained a repair estimate that placed the costs of repairs at \$127,900. The estate was unable to attract any outside interest in purchasing the cabin because of the significant and expensive repairs that were required on the property.

When it was clear there were not going to be other offers, Richann, and her sisters, Dawn Paul Charron and Danita J. Paul decided to make an offer to purchase the property from the estate for \$106,100. The offer represented the appraised value of \$234,000 less the \$127,900 cost of repairs. The purchase involved Richann, Dawn and Danita getting a credit for their interest in the cabin and a cash payout of \$26,525 from the sisters to Appellant, Shelbi Paul.

Because of the terms of the purchase and the parties involved, Richann decided to first seek court approval for the sale through a Motion to Approve Sale of Real Property. After the court issued its Order approving the sale of real

property the sale closed and Appellant, Shelbi Paul was paid \$26,525 from Richann, Dawn Paul Charron and Danita J. Paul.

B. The Appellant, Shelbi Paul failed to present a compelling factual argument against the sale of the cabin.

Appellant's Objection, doc 25 consisted of a 9 page recitation of historical grievances that appellant had against Richann. Page two of her Objection Brief discussed a disagreement over what to do with life insurance proceeds. Page three of her Objection Brief she continued to reference discussions concerning the insurance proceeds and Appellant's purchase of an automobile from the estate. Page four of her Objection Brief, the Appellant discussed conversations that were being had over the estate administration and the distribution of personal property.

Page five of her Objection Brief, the Appellant discussed the appraised value of the cabin, the home inspection report, engineer's report and repair estimate. The factual argument on page 6, 7 and 8 of her Objection Brief criticized how Richann has administered the estate so far. On Page 9 of her Objection Brief Appellant argues that the Court should deny the Motion to sell the cabin and order that the property should be distributed according to intestate succession with Richann paying all costs and attorney fees, or in the alternative, the property should be re-listed for sale with a different realtor.

Appellant did not present any evidence to rebut the evidence presented by Richann. The standard of review is to consider the evidence in the light most favorable to Richann as the prevailing party. See *Roberts v. Mission Valley Concrete Indus.* (1986), 222 Mont. 268, 271, 721 P.2d 355, 357." *Norwood v. Service Distributing, Inc.*, 2000 MT 4, 994 P.2d 25, 297 Mont. 473 (Mont. 2000).

Richann established that after listing the property on the open market for 3 and ½ months they could find no one who wanted to purchase the cabin because of the extensive structural and other damage present. Richann presented evidence as to how she and her sisters arrived at a fair price for the cabin taking the appraised value and deducting the significant cost of repairs and proposing a method of buying out Appellant's share. Richann sought and received approval of the district court for the sale.

The district court was provided two opposing factual arguments, and agreed with Richann's position, approved the Motion and allowed the sale of the cabin to the three heirs. The courts decision was supported by substantial credible evidence and are not clearly erroneous. The district court did not error when it approved the sale of the cabin to the Heirs.

2. The Settlement Agreement did not govern the sale of the cabin after the 30 day bid window closed.

On October 13, 2023, the four heirs mediated their disagreements before Hon. Gregory G. Pinski (ret). The mediation resulted in a General Release and Mediated Settlement Agreement (Agreement). Exhibit D to Doc 28. The result of the mediation was that the cabin would be sold.

The Agreement provided an orderly method to resolve competitive bids by the heirs and limited the time for which bids could be presented. The Agreement provided a 30 day window for heirs to submit bids after an appraisal was obtained.

The pertinent language of the Agreement read as follows:

Within 30 days of receiving the appraisal, if any of the four heirs chooses to buy the Real Property from the other heirs, they shall submit to the mediator proof of sufficient funds or qualification for financing to purchase the Real Property at the appraised value.

Exhibit D to Doc 28. None of the heirs submitted a bid pursuant to the terms of the Agreement. The Agreement did not address what was to happen where none of the heirs would present a qualified bid.

Since there was no sale pursuant to the terms of the Agreement, Richann using her authority as Personal Representative under § 72-3-605 and § 72-3-613(23), listed the property for sale on the open market. The property sat on the market for 3 and ½ months without an offer being made due to the serious problems with the cabin that effected its value.

The Agreement set terms of sale for the cabin that applied to any heir that submitted a qualifying offer “(w)ithin 30 days of receiving the Appraisal.”

Appellant agrees that none of the 4 heirs qualified to purchase the property pursuant to the terms of the Agreement. See first paragraph page 9 Appellant’s Opening Brief. The Agreement was silent as what happens if no qualifying bids are made.

The Appellant argues that the language of the Agreement should have prevented the sale of the cabin. However, there is nothing in the agreement that controls what happens to the cabin after there were no qualifying offers presented pursuant to the terms of the Agreement. Where the terms of an agreement have been reduced to writing by the parties, the writing is considered to contain all necessary terms, and no evidence of terms of the agreement other than the contents of the writing should be considered...” *Mandich v. French*, 408 Mont. 296, 509 P.3d 6 (Mont. 2022).

Richann, as personal representative, had the authority to list the cabin for sale and ask for the court’s approval of the sale. The district court’s decision was supported by substantial credible evidence and is not clearly erroneous. The district court did not error when it approved the sale of the cabin to the heirs.

6. CONCLUSION

This is a simple matter of a court evaluating the evidence and using its discretion in the administration of an estate. There is substantial credible evidence that supported the district court's approval of the sale of the cabin. The court did not abuse its discretion in approving the sale.

RESPECTFULLY SUBMITTED this 20th day of September, 2024.

TARUM LAW OFFICE PC

BY: 

RANDY L. TARUM
Attorney for Estate/Appellee

CERTIFICATE OF COMPLIANCE

Pursuant to Montana Rules of Appellate Procedure 11(4)(e), I certify that this brief is printed with proportional spaced Times New Roman text typeface of 14 points; is double-spaced; and the word count as calculated by Word Perfect 2020 is 3404 words, excluding Certificate of Compliance and Service.

Dated this 20th day of September, 2024.

Tarum Law Office, PC

By: 

Randy Tarum
Attorney for Estate/Appellee

CERTIFICATE OF SERVICE

I hereby certify that I have served true and accurate copy of the foregoing Appellant's Reply Brief upon each attorney of record, and each party not represented by an attorney in the above-referenced action, as follows:

SHELBI PAUL
52 Mill Coulee Road
Fort Shaw MT 59443

DATED this 20th day of September, 2024.



RANDY L. TARUM
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