

SUPREME COURT OF NEBRASKA

In re Estate of Carroll M. Anderson

311 Neb. 758 (2022) · No. No. S-21-864 · Decided June 10, 2022

SUMMARY

The Nebraska Supreme Court held that an order denying a request for appointment of a special administrator and a restraining order against a personal representative is a final, appealable order. The court further held that transferring a will contest to the district court does not divest the county court of jurisdiction to protect and administer the estate during the contest. The order was reversed and the case remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Freudenberg, J.; Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Funke, J.; Papik, J.
JURISDICTION	Nebraska
DECIDED	June 10, 2022
DOCKET	No. S-21-864
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Adult children of the decedent appealed from a county court order denying their requests for appointment of a special administrator and an order restraining the personal representative during the pendency of a will contest transferred to district court.
STANDARD OF REVIEW	Jurisdictional questions not involving factual disputes and questions of statutory interpretation are reviewed as matters of law, independently of the lower court's conclusions.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Roger D. Anderson, Carol J. Noble v. Krystal J. Collins, individually and as Personal Representative of the Estate of Carroll M. Anderson

TOPICS

- probate procedure
- estate administration
- will contests
- final judgment rule
- appellate jurisdiction

PRACTICE AREAS

probate

estate administration

appellate procedure

statutory interpretation

QUESTIONS PRESENTED

1. Whether the county court's order denying requests for appointment of a special administrator and for a restraining order was a final, appealable order affecting a substantial right.
2. Whether transferring a will contest to district court under Neb. Rev. Stat. § 30-2429.01 divested the county court of jurisdiction to decide requests for a special administrator and a restraining order protecting the estate during the contest.

HOLDINGS

1. An order denying a request under Neb. Rev. Stat. § 30-2457 for appointment of a special administrator and a concurrent request for an order restraining the personal representative is a final, appealable order because it affects a substantial right.
2. Transfer of a will contest to district court under Neb. Rev. Stat. § 30-2429.01 does not divest the county court of its original probate jurisdiction to decide the merits of a petition for a special administrator and a restraining order protecting the estate during the contest.

KEY QUOTATIONS

“We hold that an order denying a request pursuant to § 30-2457 for appointment of a special administrator and a concurrent request under § 30-2457 for an order restraining the personal representative is a final, appealable order.” (at 768)

“Accordingly, the fact that a district court has obtained, via the transfer of the will contest under § 30-2429.01, “jurisdiction over the proceeding on the contest” does not divest the county court of its original jurisdiction in probate to protect the estate during the pendency of that will contest by considering the merits of a petition for a special administrator and request for a restraining order on the personal representative.” (at 771)

*“We disapprove of *In re Estate of Miller* to the extent it could be read as suggesting that during the pendency of a will contest proceeding transferred to district court, the county court is divested of its original jurisdiction over the administration of a probate estate outside the contours of the will contest proceeding.” (at 771)*

FACTUAL BACKGROUND

Carroll M. Anderson died on January 31, 2021, leaving an estate valued at at least \$700,000, including real estate and payable-on-death accounts naming Collins as beneficiary. Collins submitted a January 27, 2021, will that disinherited Anderson and Noble, devised most of the estate to Collins, and appointed her personal representative. Anderson and Noble challenged the will based on lack of testamentary capacity, misconduct, and undue influence, offered a prior 2002 will, and sought appointment of a special administrator and restraints because they feared Collins might dissipate estate assets during the will contest.

PROCEDURAL HISTORY

Krystal J. Collins obtained informal probate of a 2021 will and was appointed personal representative. Roger D. Anderson and Carol J. Noble objected, offered a 2002 will for formal probate, and requested a special administrator and restraints on Collins. They transferred the will contest to district court under Neb. Rev. Stat. § 30-2429.01. The Boone County Court concluded that the transfer divested it of jurisdiction to decide the protective requests and denied them. The Nebraska Supreme Court held the order final and appealable, reversed, and remanded for the county court to decide the requests on their merits.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The county court must consider and decide on their merits the requests for appointment of a special administrator and for a restraining order against the personal representative.

CASES CITED

- Nebraska Republican Party v. Shively, 311 Neb. 160, 971 N.W.2d 128 (2022)
- In re Estate of Severson, 310 Neb. 982, 970 N.W.2d 94 (2022)
- In re Estate of Beltran, 310 Neb. 174, 964 N.W.2d 714 (2021)
- In re Estate of Abbott-Ochsner, 299 Neb. 596, 910 N.W.2d 504 (2018)
- Jennifer T. v. Lindsay P., 298 Neb. 800, 906 N.W.2d 49 (2018)
- In re Estate of Cooper, 275 Neb. 322, 746 N.W.2d 663 (2008)
- In re Estate of Evans, 20 Neb. App. 602, 827 N.W.2d 314 (2013)
- In re Estate of Muncillo, 280 Neb. 669, 789 N.W.2d 37 (2010)
- In re Estate of Lakin, 310 Neb. 271, 965 N.W.2d 365 (2021)
- Bohling v. Bohling, 309 Neb. 625, 962 N.W.2d 224 (2021)
- In re Estate of Sehi, 17 Neb. App. 697, 772 N.W.2d 103 (2009)
- In re Estate of Miller, 231 Neb. 723, 437 N.W.2d 793 (1989)