record. As stated above, the record does not clearly establish that the district court impaneled an anonymous jury. It may be inferred that the court impaneled a numbers jury and that at the hearing on the motion to release juror information, defense counsel was not asking for the names of the jurors but simply wanted an opportunity to talk with the jurors and wanted the court's permission to release the names of the jurors. Thus, the record does not support a plain error review.

CONCLUSION

In the case at bar, Nadeem waived any objection to the jury that was impaneled. Plain error review was improper because the record does not plainly show that the district court impaneled an anonymous jury. Therefore, we reverse the decision of the Court of Appeals and remand the cause to the Court of Appeals for further proceedings regarding Nadeem's remaining assignments of error.

REVERSED AND REMANDED FOR FURTHER PROCEEDINGS.

CASSEL, J., not participating.

JERRY A. MARTIN AND LEONARD G. MARTIN, APPELLANTS, V. ANNA B. ULLSPERGER, INDIVIDUALLY, AND LONNIE A. MARTIN, INDIVIDUALLY, APPELLEES.

822 N.W.2d 382

Filed October 19, 2012. No. S-11-1066.

1. **Decedents' Estates: Wills.** An action seeking to revoke a beneficiary's interest under a no contest provision of a will requires a court to construe the will and consider any governing statutes.
2. **Wills: Trusts.** The interpretation of the words in a will or a trust presents a question of law.
3. **Statutes.** Statutory interpretation presents a question of law.
4. **Judgments: Appeal and Error.** An appellate court independently reviews questions of law decided by a lower court.
5. **Decedents' Estates: Wills: Partition: Time.** After a probate court enters its final decree closing an estate, a devisee cannot affect a testator's restriction against a partition. So a devisee's partition action after the estate has been closed cannot be a will contest that attacks the testator's will.

Appeal from the District Court for Otoe County: RANDALL L. REHMEIER, Judge. Affirmed.

James R. Welsh and Christopher Welsh, of Welsh & Welsh, P.C., L.L.O., for appellants.

Richard H. Hoch, of Hoch, Partsch & Noerrlinger, for appellees.

HEAVICAN, C.J., WRIGHT, CONNOLLY, STEPHAN, MCCORMACK, MILLER-LERMAN, and CASSEL, JJ.

CONNOLLY, J.

SUMMARY

The parties are the surviving children of Lewis Martin, who died in 1986. Under Lewis' will, they are beneficiaries of a joint life estate interest in farmland. The last surviving child will inherit the remainder interest. The will provided that no life tenant or remainderman could partition the property during the existence of any life tenancy. Through a codicil, Lewis later added a no contest provision, which disinherited any child who contested his will.

After the probate court entered the final order in the probate proceeding, the appellees, Anna B. Ullsperger (Anna) and Lonnie A. Martin, brought a partition action in district court to divide the property. The court dismissed that action, concluding that Anna and Lonnie were bound by the will's restriction against a partition because they had not contested the will during the probate proceeding. The appellants, Jerry A. Martin and Leonard G. Martin, then filed this declaratory judgment. They claimed that Anna and Lonnie had forfeited their inheritance by contesting the will through the partition action. The court concluded that Anna and Lonnie's partition action was not a will contest because the will had already been probated. It dismissed Jerry and Leonard's declaratory judgment action. We agree with the court and affirm. After an estate is closed, a partition action cannot contest a will's restriction against partitions.

BACKGROUND

In 1970, Lewis executed his original will and first codicil. Lewis devised to his wife a life estate interest in the farmland. He also devised to any child who survived his death a life estate interest in the farmland, subject to his wife's interest. He devised the remainder interest in the farmland to his last surviving child, who would become the sole owner. The surviving children's interests were subject to a partition restriction in paragraph 7. It provided that the farmland "shall not be subject to partition by any life tenant or remaindermen named in this Will during the existence of any life tenancy in said real estate."

In 1980, Lewis executed a second codicil to his will. It added the following no contest provision:

> [I]f any of my eight children that I have provided for in my Will contest the validity of said will, . . . his or her share of my estate shall lapse and shall pass to my other remaining children, share and share alike as their interests are designated in my said will.

Two of Lewis' eight children predeceased him. In 1987, the county court issued the final order in the formal testacy proceeding to distribute the estate's assets and discharge the personal representative.

In 2004, Anna, Lonnie, and Russel Martin (another surviving child) filed an action for an accounting against Jerry and Leonard. They alleged that after the court admitted Lewis' will to probate, Jerry served as the landlord of the property, and that he turned over the farming operations to Leonard. They alleged that Leonard never consulted them or accounted to them for farm expenses and income. They asked the court to determine each cotenant's interest in the net farm income or to order a sale of the property and divide the proceeds. Jerry and Leonard's answer showed that Jerry had kept the farm records since his discharge as the personal representative of Lewis' estate and that Leonard had farmed the property as a "crop share tenant" since Lewis' death.

In 2006, the court approved a settlement of the accounting action. In the settlement, the parties agreed to enter a

lease between Leonard as the farm tenant and the other three siblings as landlords. Among other things, Jerry agreed to maintain a separate bank account for the farm, to timely provide records of income and expenses to Anna and Lonnie, and to pay them their share of farm income by a specified date each year.

In 2008, Anna and Lonnie filed the partition action. In that action, they stipulated that Lewis' wife and two of his surviving children had already died. So Lewis' only surviving children are his four children named as parties in the partition action and the declaratory judgment action. The court dismissed Anna and Lonnie's partition action in 2009. Jerry and Leonard filed their declaratory judgment action in 2011.

Jerry and Leonard alleged that Anna and Lonnie's partition action was a will contest that challenged the partition restriction in paragraph 7. They claimed that because Anna and Lonnie had contested the will without probable cause, they had forfeited their share of the estate under the no contest provision. Jerry and Leonard sought a declaration that they owned undivided life estates in the farmland unencumbered by the lapsed interests of Anna and Lonnie.

Both sides moved for summary judgment. The court received the records of the accounting action and the partition action and took judicial notice of these proceedings. After reviewing the evidence, the court determined that the partition action was not a will contest:

> [Anna and Lonnie] in the partition action forfeited their right to contest the provisions of the Will by allowing the Will to be probated. Once probated, the issues regarding the contingent remainder interest of the parties became indestructible and could not be partitioned and, in fact, there was also a valid testamentary restriction on partition existing which was enforceable as a result of the probate of [Lewis'] Will. Essentially, Anna . . . and Lonnie . . . had become bound by the terms of the Will in that they had not contested the Will. Their partition action . . . did not act as a contest of the Will, but was a separate legal proceeding initiated by them which was dismissed by the

> court for the reason in part that they were precluded from now raising such issues which could have been raised in the probate proceeding.

Accordingly, the court concluded that Anna and Lonnie had not forfeited their inheritance by filing the partition action and dismissed Jerry and Leonard's declaratory judgment action. The court overruled Jerry and Leonard's subsequent motion for a new trial or to alter or amend the order.

ASSIGNMENTS OF ERROR

Jerry and Leonard assign that the court erred in concluding that the partition action was not a will contest, granting summary judgment for Anna and Lonnie, and overruling their motion for a new trial or to alter or amend the order.

STANDARD OF REVIEW

[1-4] An action seeking to revoke a beneficiary's interest under a no contest provision of a will requires a court to construe the will and consider any governing statutes. The interpretation of the words in a will or a trust presents a question of law.[1] Statutory interpretation presents a question of law.[2] We independently review questions of law decided by a lower court.[3]

ANALYSIS

Jerry and Leonard contend, for various reasons, that Anna and Lonnie contested the will through their partition action and therefore forfeited their inheritance. Anna and Lonnie argue that the partition action cannot be a will contest because the probate court had already closed the estate. We agree.

Generally, courts have held that the following types of claims constitute will contests: "lack of testamentary capacity, fraud, undue influence, improper execution, forgery, or a subsequent revocation of the will by a later document."[4] These

---

[1] *Channer v. Cumming*, 270 Neb. 231, 699 N.W.2d 831 (2005).

[2] See *Connelly v. City of Omaha, ante* p. 131, 816 N.W.2d 742 (2012).

[3] *Bock v. Dalbey*, 283 Neb. 994, 815 N.W.2d 530 (2012).

[4] See Annot., 3 A.L.R.5th 590, 590 (1992).

claims can all be characterized as a direct attack on the validity of a will. We need not decide here whether a partition action could ever be an indirect attack on a will that constitutes a will contest because we conclude that Anna and Lonnie could not attack the will after a court issued an order that closed the estate.

We note that Neb. Rev. Stat. § 30-24,109 (Reissue 2008) permits heirs to an undivided interest in property to seek a partition before the formal or informal closing of an estate. But here, Anna and Lonnie did not commence their partition action until long after the county court had entered the final order in the probate proceeding.

A contestant generally contests a will by filing a petition objecting to the informal probate of the will or by asking the court to set aside an informal probate. Either petition will result in a formal testacy proceeding.[5] "A formal testacy proceeding is litigation to determine whether a decedent left a valid will."[6] In addition, if the proponent of a will petitions for a formal testacy proceeding, any party who opposes the probate may file objections.[7]

Lewis' will was probated through a formal testacy proceeding. But no one contested Lewis' will before the county court issued its final order closing the estate. And subject to appeal and vacation, a formal testacy order "is final as to all persons with respect to all issues concerning the decedent's estate that the court considered or might have considered incident to its rendition relevant to the question of whether the decedent left a valid will, and to the determination of heirs."[8]

[5] Under these statutory provisions, the district court correctly concluded that Anna and Lonnie were bound by the terms of the will because they had not contested it. After a probate court enters its final order closing an estate, a devisee cannot affect a testator's restriction against a partition. So a

---

[5] See Neb. Rev. Stat. §§ 30-2425, 30-2426, and 30-2429.01 (Reissue 2008).

[6] § 30-2425.

[7] Neb. Rev. Stat. § 30-2428 (Reissue 2008).

[8] Neb. Rev. Stat. § 30-2436 (Reissue 2008).

devisee's partition action after the estate has been closed cannot be a will contest that attacks the testator's will. Instead, Lewis' no contest provision had the effect of foreclosing such actions and protecting his intent that the last heir standing would inherit the farmland.

CONCLUSION

We conclude that the district court correctly determined that Anna and Lonnie's partition action was not a will contest because it was filed after the estate was closed.

AFFIRMED.

FLORAL LAWNS MEMORIAL GARDENS ASSOCIATION, A NEBRASKA CORPORATION, APPELLEE, V. BRUCE C. BECKER, APPELLANT, AND LINDA BECKER, APPELLEE.

822 N.W.2d 692

Filed October 19, 2012. No. S-11-1077.

1. **Accounting: Equity.** An action for accounting may be one in law or one in equity.
2. **Equity: Appeal and Error.** On appeal from an equity action, an appellate court decides factual questions de novo on the record and, as to questions of both fact and law, is obligated to reach a conclusion independent of the trial court's determination.
3. **Receivers: Corporations.** Appointing a receiver for a corporation is a harsh and drastic remedy, and is not one to be implemented lightly.
4. **Receivers: Statutes: Notice.** Under Nebraska law, a court's ability to appoint a receiver is governed by statute. The court can appoint a receiver only in specific situations, and the court must provide notice to all interested parties.
5. **Receivers: Notice.** An order appointing a receiver must provide notice to all interested parties, or the order is void.
6. **Receivers: Final Orders.** An order appointing a receiver is a final, appealable order.
7. **Corporations: Statutes.** Corporations are creatures of statute, and they may be dissolved only according to statute.
8. **Receivers: Corporations.** The general nature of a receiver's task, unless appointed in an action for corporate dissolution, is to preserve and protect the property under his or her control.
9. ____: ____. Where there is no proper action for corporate dissolution, a court does not have the power to bypass that requirement and effectively dissolve the