allegations suggest the existence of the elements required to show both a due process and an equal protection violation. Further, the factual allegations raise a reasonable expectation that discovery will reveal evidence of these two constitutional claims. Accordingly, we reverse the district court's dismissal of Sherman's constitutional claims and remand the cause for further proceedings not inconsistent with this opinion.

CONCLUSION

As Sherman failed to argue before the district court that Karyn waived the statute of limitations defense and, as such, the district court erred in dismissing his paternity action, Sherman's first assignment of error is meritless. We also find that Sherman does not have standing to challenge the dismissal of Karyn's counterclaim. Thus, Sherman's second assignment of error is meritless. Finally, as noted above, based upon the record before us, we reverse the district court's dismissal of Sherman's constitutional claims and remand the cause for further proceedings not inconsistent with this opinion.

AFFIRMED IN PART, AND IN PART REVERSED AND REMANDED FOR FURTHER PROCEEDINGS.

IN RE ESTATE OF INA WEGNER ODENREIDER, DECEASED. CHRISTY L. NEEL, APPELLEE, V. ROBERT WEGNER ET AL., APPELLANTS.

837 N.W.2d 756

Filed August 16, 2013. No. S-12-579.

1. **Decedents' Estates: Appeal and Error.** An appellate court reviews probate cases for error appearing on the record made in the county court.
2. **Decedents' Estates: Judgments: Appeal and Error.** When reviewing questions of law in a probate matter, an appellate court reaches a conclusion independent of the determination reached by the court below.
3. **Statutes: Appeal and Error.** Statutory interpretation presents a question of law that an appellate court independently reviews.
4. **Trial: Waiver: Appeal and Error.** A litigant's failure to make a timely objection waives the right to assert prejudicial error on appeal.

5. **Decedents' Estates: Wills.** Chapter 30, article 24, of the Nebraska Revised Statutes addresses the probate and administration of wills and provides the rules in Nebraska for both informal and formal probate of wills, including the rules for supervised administration. This chapter is based upon the Uniform Probate Code.
6. **Decedents' Estates: Pleadings.** Pursuant to Neb. Rev. Stat. § 30-2441(a) (Reissue 2008), the filing of a petition for supervised administration stays action on any informal application then pending or thereafter filed.
7. **Decedents' Estates: Courts.** Neb. Rev. Stat. § 30-2440 (Reissue 2008) provides when a probate court may grant a petition for supervised administration.
8. ____: ____. Once supervised administration is ordered, a probate court is granted liberal authority to direct the supervised personal representative.
9. **Decedents' Estates: Wills: Courts.** The probate or annulment of a will and the administration of a decedent's estate are reserved to state probate courts.
10. **Property: Sales.** It is impossible to sell an interest in property one does not own.

Appeal from the County Court for Dodge County: KENNETH VAMPOLA, Judge. Affirmed.

Robert A. Mooney, of Gross & Welch, P.C., L.L.O., for appellants.

William J. Bianco, of Bianco Stroh, L.L.C., for appellee.

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

HEAVICAN, C.J.

I. INTRODUCTION

This appeal involves the probate of the estate of Ina Wegner Odenreider (Ina). Robert Wegner, Mark Wegner, and Laura Sherman (collectively appellants) petitioned this court for bypass of the Nebraska Court of Appeals, contending this case presented a novel legal question involving the Nebraska Probate Code. We granted appellants' petition to bypass.

We conclude that the probate court had jurisdiction to determine the matters at issue in this estate. We further determine that the probate court did not err in ordering supervised administration of the estate and ordering the personal representative to amend the proposed distribution based upon our de novo review explained below. We affirm the order of the probate court.

II. FACTUAL BACKGROUND

Robert is one of Ina's two sons and the personal representative of her estate. Mark and Sherman are Robert's children. Ina's other son, Joel Wegner, had three children.

Ina was married to Willis Wegner. Willis passed away in 1990. Relevant to this appeal are five parcels of land that Ina and Willis owned at the time of Willis' death. All were owned by Ina and Willis as tenants in common. Upon Willis' death, he left his one-half interest in one parcel to Ina outright. Through a trust, Willis left Ina a life estate in his one-half interest in the remaining four parcels, with certain remainder interests vested in Robert and Joel and the children of Robert and Joel.

In 1998, one of Joel's children, Christy L. Neel (Christy), filed for chapter 7 bankruptcy. She listed as one of her assets her contingent interest in Willis' trust, as noted above. Mark purchased that interest at a bankruptcy auction. The description of the interest sold at auction was not specific, but instead was described as whatever interest Christy had in the trust.

In 2005, Ina executed her last will and testament. Via a trust, she left her interest in all five parcels to Robert and Joel. If either Robert or Joel had died, his children would take Willis' half; if both had died, the trust would terminate and the assets would be distributed one-half to the children of Robert and one-half to the children of Joel. In fact, Joel predeceased Ina. In her will, Ina also bequeathed Christy $25,000. She did not gift a cash amount to any of her other grandchildren.

Ina died in June 2010. Robert was named personal representative in Ina's will and, as such, in July 2010, filed an "Application for Informal Probate of Will and Informal Appointment of Personal Representative," pursuant to Neb. Rev. Stat. § 30-2414 (Reissue 2008). This section allows for appointment of a personal representative to administer an estate under a will without formal litigation. Upon receipt of such application, the registrar must validate the completeness of the application and accept or deny the request for appointment of a personal representative.[1] The registrar's findings in

[1] See Neb. Rev. Stat. §§ 30-2414 through 30-2424 (Reissue 2008).

informal probate proceedings are conclusive as to all persons until superseded by a formal testacy proceeding.[2]

In December 2010, Robert filed an inventory of estate property as required by Neb. Rev. Stat. § 30-2467 (Reissue 2008) and filed an amended inventory in July 2011. A proposed schedule of distribution was filed on September 6. This schedule listed Mark as having Christy's interest in Ina's property. The schedule did not list the $25,000 left to Christy in Ina's will.

On September 9, 2011, Christy filed an "Objection to Determination of Inheritance Tax and Motion for Supervised Administration." The inheritance tax objection was later withdrawn and is not relevant to this appeal. Christy provided in her motion for supervised administration that she did "not agree with the Personal Representative's handling of this case and believe[d] it would be in the best interests of all beneficiaries that the estate be supervised since correct and proper administration will affect the distribution to all beneficiaries."

A hearing was held on Christy's objection and motion on October 17, 2011, at which Christy argued that the estate was not being handled properly and that she would like a court-administered personal representative appointed. Christy asserted that pursuant to Ina's will, she was left an interest in Ina's land that would go to a trust, but that Robert, as the current personal representative, did not include this interest in the schedule of distribution for Ina's estate. Robert had expressed to Christy that he believed Christy's interest in Ina's land was sold during Christy's bankruptcy auction. Christy also noted that the personal representative did not include the $25,000 amount left to Christy under Ina's will.

At the hearing, Robert did not necessarily object to a supervised administration of the estate, but did object to the appointment of a new personal representative. In response to Christy's contentions, Robert argued that Christy should have filed an objection to the schedule of distribution pursuant to Neb. Rev. Stat. § 30-24,104(b) (Reissue 2008) of the Nebraska Probate

[2] § 30-2415(a).

Code. Robert further argued that the bankruptcy court was the proper forum to determine what Christy had sold as a part of her bankruptcy.

After considering the parties' arguments, the probate court ordered the filing of any supplemental motions and scheduled an evidentiary hearing for December 15, 2011. Primarily at issue during the December 15 hearing was what interest was sold to Mark at Christy's bankruptcy auction. In addition, Christy filed a motion with the bankruptcy court to consider that same question. The latter motion was denied by the bankruptcy court, with that court concluding the probate court was better positioned to determine that question.

At a subsequent hearing before the probate court on April 9, 2012, the probate court addressed the question of whether Christy's objection to final distribution was outside of the time period to file that motion. The probate court, citing Neb. Rev. Stat. § 30-2441(a) (Reissue 2008), found that Christy's objection was timely, because her September 9, 2011, motion for supervised administration stayed the informal probate proceedings.

On May 23, 2012, the probate court entered an order concluding that Christy's interest in Ina's share of the land was not transferred to Mark via the trustee deed following the bankruptcy sale. The probate court also approved Christy's motion for supervised administration. The probate court concluded that the personal representative had made various errors related to the distribution of the estate. Accordingly, the probate court ordered that the personal representative should (1) be supervised by the court and (2) amend the schedule of distribution to correct the errors the court found.

III. ASSIGNMENTS OF ERROR

Appellants assign that the probate court (1) erred in failing to find that Christy failed to provide proper notice of her motion for supervised administration; (2) erred in finding that the motion for supervised administration tolled Christy's deadline to object to the distribution; (3) exceeded its jurisdiction in concluding that certain property was not sold in Christy's bankruptcy; and (4) erred in relying on parol evidence to

determine the interest sold at the bankruptcy auction, and in ignoring contemporaneous writings evidencing the sale of her further contingent interest.

IV. STANDARD OF REVIEW

[1-3] An appellate court reviews probate cases for error appearing on the record made in the county court.[3] When reviewing questions of law in a probate matter, an appellate court reaches a conclusion independent of the determination reached by the court below.[4] Statutory interpretation presents a question of law that an appellate court independently reviews.[5]

V. ANALYSIS

1. Motion for Supervised Administration

(a) Labeling and Notice Issue

[4] Appellants first argue that the probate court erred as a matter of law when it considered and granted Christy's motion for supervised administration without requiring Christy to follow the mandatory procedures set forth in the Nebraska Probate Code. Specifically, appellants contend that Christy needed to file a separate "petition" for supervised administration rather than a "motion" for supervised administration and, further, that Christy failed to serve notice of her motion to all interested parties pursuant to the probate code. Although appellants assert these arguments on appeal, they did not advance these arguments before the probate court and the probate court did not rule on these issues. We have held that a litigant's failure to make a timely objection waives the right to assert prejudicial error on appeal.[6] Thus, we will not address

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[3] *In re Estate of Fries*, 279 Neb. 887, 782 N.W.2d 596 (2010).

[4] *Id.*

[5] *Rosberg v. Vap*, 284 Neb. 104, 815 N.W.2d 867 (2012).

[6] *Ford v. Estate of Clinton*, 265 Neb. 285, 656 N.W.2d 606 (2003). See, also, *State v. Nadeem*, 284 Neb. 513, 822 N.W.2d 372 (2012); *Farmers Mut. Ins. Co. v. Kment*, 265 Neb. 655, 658 N.W.2d 662 (2003).

these arguments on appeal. Appellant's first assignment of error is without merit.

(b) Motion for Supervised Administration's Effect on Informal Probate Proceeding

Appellants next contend that the probate court erred in finding Christy's motion for supervised administration filed pursuant to Neb. Rev. Stat. § 30-2439 (Reissue 2008) tolled Christy's 30-day deadline to object to the distribution of assets set forth in the schedule of distribution in the informal probate of Ina's estate. In order to address this assignment of error, we must review the sections of the Nebraska Probate Code relevant to this appeal.

[5] Chapter 30, article 24, of the Nebraska Revised Statutes addresses the probate and administration of wills and provides the rules in Nebraska for both informal and formal probate of wills, including the rules for supervised administration. This chapter is based upon the Uniform Probate Code. Section 30-24,104(b) provides that in informal probate:

> After the probable charges against the estate are known, the personal representative may mail or deliver a proposal for distribution to all persons who have a right to object to the proposed distribution. The right of any distributee to object to the proposed distribution on the basis of the kind or value of asset he is to receive, if not waived earlier in writing, terminates if he fails to object in writing received by the personal representative within thirty days after mailing or delivery of the proposal.

It is undisputed that Christy received the personal representative's proposed schedule of distribution on September 1, 2011. The personal representative filed the schedule of distribution on September 6. Christy filed her motion for supervised administration on September 9, after reviewing the proposed schedule of distribution with counsel. Christy's motion for supervised administration was scheduled for hearing on September 26. The hearing was postponed, however, until October 17, because counsel for the personal representative had a scheduling conflict. On November 8, Christy filed an objection to the proposed distribution.

Appellants argue that Christy's objection was untimely pursuant to § 30-24,104(b) because this section requires that a beneficiary object to the schedule of distribution in an informal probate matter within 30 days of receiving the proposed distribution. Here, Christy received the proposed distribution on September 1, 2011. Although she filed her motion for supervised administration on September 9, in which she alleged the estate was not being properly handled regarding distribution to the beneficiaries, she did not file her objection to final distribution in the informal probate until November 8. Thus, pursuant to the plain language of § 30-24,104(b), Christy's objection was indeed untimely.

In addressing this issue of untimeliness, the probate court, relying on § 30-2441(a), found that Christy's motion for supervised administration filed September 9, 2011, stayed action related to the informal probate proceeding. Because of this, the probate court found Christy's objection was timely filed.

Section 30-2441 explains a petition for supervised administration's effect on other proceedings:

> (a) The pendency of a proceeding for supervised administration of a decedent's estate stays action on any informal application then pending or thereafter filed.
>
> (b) If a will has been previously probated in informal proceedings, the effect of the filing of a petition for supervised administration is as provided for formal testacy proceedings by section 30-2425.
>
> (c) After he has received notice of the filing of a petition for supervised administration, a personal representative who has been appointed previously shall not exercise his power to distribute any estate. The filing of the petition does not affect his other powers and duties unless the court restricts the exercise of any of them pending full hearing on the petition.

[6] Pursuant to § 30-2441(a), the filing of a petition for supervised administration stays action on any informal application then pending or thereafter filed. Here, however, the application had been previously probated. Thus, § 30-2441(a) was inapplicable to the facts of this case. Because the will had been

previously probated in informal proceedings, § 30-2441(b) was instead applicable.

Section 30-2441(b) provides that "the effect of the filing of a petition for supervised administration *is as provided for formal testacy proceedings by section 30-2425*." (Emphasis supplied.) Neb. Rev. Stat. § 30-2425 (Reissue 2008) provides in part:

> A petition may seek formal probate of a will without regard to whether the same or a conflicting will has been informally probated. A formal testacy proceeding may, but need not, involve a request for appointment of a personal representative.
>
> During the pendency of a formal testacy proceeding, the registrar shall not act upon any application for informal probate of any will of the decedent or any application for informal appointment of a personal representative of the decedent.
>
> Unless a petition in a formal testacy proceeding also requests confirmation of the previous informal appointment, a previously appointed personal representative, after receipt of notice of the commencement of a formal probate proceeding, must refrain from exercising his power to make any further distribution of the estate during the pendency of the formal proceeding. A petitioner who seeks the appointment of a different personal representative in a formal proceeding also may request an order restraining the acting personal representative from exercising any of the powers of his office and requesting the appointment of a special administrator. In the absence of a request, or if the request is denied, the commencement of a formal proceeding has no effect on the powers and duties of a previously appointed personal representative other than those relating to distribution.

Pursuant to § 30-2425, a petition for supervised administration may be filed without regard to whether the same or a conflicting will has been informally probated. And once a petition for supervised administration is filed, the previously appointed personal representative must refrain from exercising his power to make any further distribution of the estate during

the pendency of the formal proceeding. Thus, we conclude that, although the will at issue in this case had been previously probated in informal proceedings, Christy had the right to file a motion for supervised administration with the probate court. The filing of this motion prevented Robert, as the current personal representative, from making any distribution under Ina's will.

[7] We must, therefore, consider whether Christy's concerns about the distribution were properly addressed through Christy's motion for supervised administration. Neb. Rev. Stat. § 30-2440 (Reissue 2008) provides when a probate court may grant a petition for supervised administration:

> A petition for supervised administration may be filed by any interested person or by a personal representative at any time . . . . If not previously adjudicated, the court shall adjudicate the testacy of the decedent and questions relating to the priority and qualifications of the personal representative in any case involving a request for supervised administration, even though the request for supervised administration may be denied. [T]he court shall order supervised administration of a decedent's estate . . . if the court finds that supervised administration is necessary under the circumstances.

This section mandates that once a petition for supervised administration is filed, a probate court must adjudicate the testacy of the decedent and questions relating to the priority and qualifications of the personal representative if these issues have not been previously adjudicated, even though the motion may end up being denied. In this case, the probate court held a hearing on October 17, 2011, adjudicating the testacy of Ina and addressing the questions relating to the priority and qualifications of Robert as the personal representative. After holding such hearing, § 30-2440 allows a probate court to order supervised administration "if the court finds that supervised administration is necessary under the circumstances." In our de novo review of the record, we find the probate court did not err in ordering supervised administration in this case, because it found that the personal representative had made errors in the proposed distribution.

[8] And once supervised administration is ordered, a probate court is granted liberal authority to direct the supervised personal representative. Section 30-2439 provides that "[a] supervised personal representative is responsible to the court, as well as to the interested parties, and is subject to directions concerning the estate made by the court on its own motion or on the motion of any interested party." Thus, pursuant to § 30-2439, the probate court was well within its province to order, on its own motion, the personal representative to adjust the proposed distribution to correct the errors concerning the estate. A proper result will not be reversed merely because it was reached for the wrong reason.[7] We conclude that although the probate court erred in its reasoning, it nevertheless had the authority to order supervised administration and to direct the personal representative to amend the proposed distribution. Appellants' second assignment of error is without merit.

2. Jurisdiction

Appellants next assign that the probate court did not have jurisdiction to resolve the question of what was sold at Christy's 1998 bankruptcy auction. Appellants claim that the federal bankruptcy court had exclusive jurisdiction to address this matter.

Christy's claim of supervised administration involves the administration of an estate and the probate of a will. Neb. Rev. Stat. § 24-517 (Cum. Supp. 2012) provides that each county court shall have the following jurisdiction: Exclusive original jurisdiction of all matters relating to decedents' estates, including the probate of wills and the construction therefor. Furthermore, Neb. Rev. Stat. § 30-2211 (Cum. Supp. 2012) grants the county courts jurisdiction over all subject matter relating to estates of decedents, including the determination of heirs and successors of decedents. Ultimately, this case deals with the construction and probate of Ina's will and the inheritance of her heirs, in light of Christy's prior bankruptcy filing.

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[7] See, e.g., *Boettcher v. Balka*, 252 Neb. 547, 567 N.W.2d 95 (1997).

[9] As discussed in the U.S. Supreme Court decision in *Marshall v. Marshall*,[8] the probate or annulment of a will and the administration of a decedent's estate are reserved to state probate courts. *Marshall* further discussed in dicta instances in which conflicts over the same property may arise both in federal bankruptcy proceedings and in state probate proceedings, and discussed instances in which federal courts may have "exclusive jurisdiction" over the subject matter.[9] Nothing in *Marshall* compels this court to conclude that the federal bankruptcy court had exclusive jurisdiction over the matters at issue in this case. And in any case, Christy filed a motion with the bankruptcy court to determine what interest was sold to Mark at the bankruptcy auction. That motion was denied by the bankruptcy court, with that court concluding the probate court was better positioned to determine the question.

For the above reasons, we find the probate court had jurisdiction to hear this matter as it related to Ina's estate. Appellants' third assignment of error is without merit.

3. Parol Evidence

Finally, appellants assign that the probate court erred in relying on parol evidence to determine the interest sold at the bankruptcy auction and in ignoring contemporaneous writings evidencing the sale of Christy's contingent interest in Ina's land. Specifically, appellants claim the probate court erred in relying on the testimony of a bankruptcy trustee and his recollection of what Christy sold and by ignoring the written auction notice related to the sale. At the hearing, the trustee stated that the assets in Christy's bankruptcy estate included "[a]ll the assets, tangible and intangible . . . that existed as of the moment of the filing of the bankruptcy case." The auction notice provides in part: "We are selling a remainder interest (1/6th total) and buyer will receive their [sic] interest upon death or transfer or current life estate."

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[8] *Marshall v. Marshall*, 547 U.S. 293, 126 S. Ct. 1735, 164 L. Ed. 2d 480 (2006).

[9] *Id.*

According to appellants, the "1/6th total" represents Christy's fractional interest in both Willis' and Ina's land, and thus they claim that both of these interests were sold at the bankruptcy auction.

Pursuant to 11 U.S.C. § 541 (2006), a bankruptcy estate includes any interest in property if such interest had been an interest of the debtor on the date of the filing of the petition and the debtor "acquires or becomes entitled to acquire within 180 days after such date" by bequest, devise, or inheritance. Christy filed for bankruptcy on May 13, 1998. At that point in time, Christy had an interest in Willis' land; however, Christy had no interest in Ina's land. The Nebraska law of wills has long provided that a devisee acquires no interest in property by the mere execution of a will. It is an elementary rule that the provisions of a will take effect and become operative at the time of the death of the testator.[10] The will always speaks from the date of the testator's death, and speaks conclusively as of that particular date.[11] We have stated the same principles another way. A will is, according to law, of an ambulatory character, and no person can have any rights in it until the testator is dead.[12] Thus, Christy did not "acquire" or "become entitled to acquire" any interest in Ina's land until Ina's death in June 2010. Even if federal bankruptcy law, during the testator's lifetime, would treat a devisee as one "entitled to acquire" the subject of the devise, Christy had no such interest at the time of her bankruptcy in 1998. Ina signed the first version of her will on January 3, 2001. The final version of the will was executed in 2005. The 180-day period specified in 11 U.S.C. § 541(a)(5) had long expired by the time Ina signed the first version of her will.

We note that after the probate court issued its final order in this case, appellants filed a motion for rehearing, presenting the 2001 will mentioned above and a version of Ina's will purportedly drafted in 1993. The 1993 will, however, was not

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[10] *Smullin v. Wharton*, 83 Neb. 328, 119 N.W. 773 (1909).

[11] *In re Estate of Dimmitt*, 141 Neb. 413, 3 N.W.2d 752 (1942).

[12] *Muse v. Stewart*, 173 Neb. 520, 113 N.W.2d 644 (1962).

signed by Ina, and there was no evidence presented that it was ever executed. We therefore disregard this evidence, just as the probate court did.

We find the probate court did not consider "parol evidence" or fail to give proper weight to the auction notice. The deed at issue in this case was silent as to the fractional interest in land sold at the bankruptcy auction. Thus, the probate court reviewed the evidence presented by the parties to determine what was sold pursuant to this deed. Although the probate court noted the trustee's testimony in its order, its decision regarding what was sold pursuant to Christy's bankruptcy was not based solely upon that testimony. Instead, the probate court's decision was ultimately based upon the facts that Ina's will did not exist at the time of the sale and also that Ina was not deceased at the time of the sale. Based upon this evidence, the probate court appropriately disregarded the notice and concluded that the "1/6th total" interest written on the notice appeared to be inaccurate.

[10] As Christy's interest in Ina's land did not arise before Christy's bankruptcy filing on May 13, 1998, or within 180 days after the filing, the probate court found such interest did not fall within the confines of and was not part of Christy's bankruptcy estate. Only Christy's interest in Willis' share of the land was conveyed to Mark via the deed. No part of Ina's interest in the property was conveyed to Mark at that point. Thus, we agree with the probate court's finding. It is impossible to sell an interest in property one does not own.[13] As such, we find that the probate court made the correct determination regarding what Christy was entitled to through Ina's estate. Appellants' final assignment of error is without merit.

VI. CONCLUSION

The order of the probate court is affirmed.

AFFIRMED.

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[13] Cf. *State ex. rel. Counsel for Dis. v. Phillips*, 284 Neb. 940, 824 N.W.2d 376 (2012).