NOT DESIGNATED FOR PUBLICATION

No. 124,085

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of the Estate of
DORIAN L. GRAY.

MEMORANDUM OPINION

Appeal from Sedgwick District Court; ROBB W. RUMSEY, judge. Opinion filed March 31, 2023. Affirmed.

Gary Minor, appellant pro se.

Evelyn Benton Gray, appellant pro se.

Martin W. Bauer and *Teresa L. Adams*, of Martin, Pringle, Oliver, Wallace & Bauer, L.L.P., of Wichita, for appellee special administrator for the Estate of Dorian Gray.

Before HILL, P.J., BRUNS and WARNER, JJ.

PER CURIAM: In this probate dispute, Gary Minor and Evelyn Benton argue that the district court erred when it set aside the deed to a house that Benton purportedly sold to Minor. The house had belonged to Dorian Gray, who was in a romantic relationship with Benton around the time he died. The administrator of Gray's estate moved to invalidate the sale, asserting that Benton did not have the authority to sell the house. After an evidentiary hearing, the district court granted the motion, finding Benton and Gray were never married and Minor had no cognizable interest in the property. Minor and Benton appeal that decision. After reviewing the record and the parties' arguments, we agree that the sale was invalid and affirm the district court's judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Gray died unexpectedly in February 2020, leaving no will. Gray had been living in Wichita for a few months after his mother's death to help handle her affairs. Before that, he lived in Texas for five years with his romantic partner, Benton. Gray's death certificate listed his residence as Wichita and his marital status as "never married." When Gray died, he owned a house in Wichita that he inherited from his mother. The county valued the house at $47,500, and a private appraisal later valued it at about $30,000.

The district court appointed Martin Bauer, a local attorney, as special administrator of Gray's estate, and granted Bauer authority to sell any of Gray's property, including the house. Upon undertaking his duties as administrator, Bauer discovered that Gray had an heir—a son named Shrone Landrum. Bauer found no other heirs.

In September 2020, Benton executed a deed purporting to sell Gray's Wichita house for $10,000 to Gary Minor—who also lived in Texas—and his company. Although Benton and Gray had never formally married, Benton claimed to be Gray's surviving common-law spouse and sole heir. (She was not aware that Gray had a son.) Benton's name was not on the title to the house.

After obtaining the deed, Minor attempted to sell the Wichita house to a developer for $50,000. But before the sale was finalized, the title company contacted Minor and the potential purchaser and explained that it could not find anything showing Benton ever had an interest in the property, so any sale would have to be approved in a Kansas probate proceeding. The title company refused to insure the title, and the purchaser canceled the sale.

In February 2021, Bauer hired someone to inspect, clean, and appraise the house; soon after, he began to receive offers from people interested in buying it. He accepted the

highest offer (for $30,000) on behalf of Gray's estate, subject to the probate court's approval. Meanwhile in Texas, Minor attempted to sell the house to another company for $52,000. But this sale also fell through when the buyer could not get into the house to inspect it—Gray's uncle had placed locks on the house to prevent thefts before delivering the keys to Bauer.

At some point, Bauer checked county records and learned about Benton's purported sale of the house to Minor. Bauer contacted Minor. He then petitioned the district court to set aside Minor's deed as invalid and proceed with a private sale of the property. Bauer asserted that Benton had never married Gray, so she had no property interest in Gray's house and lacked authority to sell it. Minor, representing himself, filed an answer opposing the petition and moved for summary judgment. He argued that Bauer was acting dishonestly and had violated various statutes, rules, and constitutional provisions. Minor also argued that the Uniform Commercial Code (UCC) protected him as a bona fide purchaser of the property.

The district court held an evidentiary hearing on these motions, where Minor and Benton both represented themselves. The court denied Minor's summary-judgment motion before hearing testimony from Benton, Landrum (Gray's son), Gray's uncle, and Landrum's mother.

Other than Benton, none of the witnesses were aware of Gray being married to anyone when he died. Gray's uncle knew Gray was in Texas with a woman but did not think they were married. Landrum said his father had a girlfriend who had sent Landrum money, but it was not Benton. (Benton and Landrum had never met, and Benton did not know Gray had a son until she learned of his existence during the probate proceedings.)

Benton provided conflicting testimony about her relationship with Gray:

- On the one hand, Benton testified that while she and Gray never had a formal ceremony, they considered themselves to be common-law married because they lived together as husband and wife in Texas for four years and held themselves out as married. Benton and Minor presented letters that Gray had written to Benton, addressed "To my wife." Gray had also received mail at Benton's address.

- On the other hand, Benton suggested that she and Gray had plans to marry but had not yet done so when he died. She told the district court, "[w]e were getting married when he got back [from Wichita]. It never happened." Later in the hearing, she testified that Gray "passed away before we could do anything."

Other evidence presented at the hearing also cast doubt on the existence of a common-law marriage. Shortly before Gray died, he opened a bank account in his name only. He designated the pay-on-death beneficiary for this account as the administrator of his mother's estate, not Benton. Gray listed the house in Wichita as his home address for the account, not Benton's house where he had been living in Texas. Benton took out a life-insurance policy in 2017 in which she named her daughter as the primary beneficiary and Gray—whom she designated her fiancé—as the contingent beneficiary. Gray and Benton never filed joint tax returns. And Gray was not on the title to Benton's Texas house, nor was Benton on the title to Gray's Wichita house.

After hearing the evidence, the district court granted the estate's motion to set aside Minor's deed as invalid. The court found that Benton had no power to sell the property outside of the probate action, and Benton did not have the power to sell the property anyway because Benton and Gray were not married when Gray died. The court also found that the UCC did not apply to the real-estate transaction and, even so, Minor was not a bona fide purchaser. Thus, the court found, neither Minor nor Benton ever had a valid interest in the property, and the administrator had the exclusive authority to sell it.

After the hearing, Bauer moved to confirm a sale of the property for a new offer he received of $40,250. Minor and Benton separately tried to appeal the district court's decision setting aside their deed, and the court held another hearing to resolve these matters. Concerned that the estate could lose a beneficial sale while an appeal was pending, the district court granted an interlocutory appeal of its decision and declined to stay the estate's pending sale unless Minor or Benton posted a bond in that amount within two weeks. Neither did, so in June 2020 the district court authorized and confirmed the sale for $40,250. As the district-court proceedings were ongoing, a Texas court granted Benton's request to change her name from Evelyn Benton to Evelyn Benton-Gray.

Minor moved to recuse the probate judge, alleging that the judge may not have been impartial because of a history and "professional association" with Bauer, though Minor did not provide any further explanation. The court denied the motion after a hearing and reiterated its earlier ruling and confirmation of the private sale. In August 2020, Bauer notified the court that the private sale had closed, with net proceeds of $17,020.26 after paying the estate's creditors. That money is now in a trust account pending this appeal.

DISCUSSION

Minor and Benton, who each continue to represent themselves, now appeal the district court's decision invalidating their sale and setting aside the deed. Though they have filed separate briefs, their arguments largely coincide and center on their allegation that the district court should have found that Benton had authority to sell the property to Minor because Gray and Benton were common-law married. Minor also argues that, even if Benton was not married to Gray, he purchased the house in good faith and thus should be permitted to keep the property. And both Minor and Benton raise various claims assailing the fairness of the proceedings and the conduct of the administrator and district court. We do not find these arguments persuasive.

1. *The district court did not err in invalidating Benton's sale to Minor.*

Our analysis begins with the district court's ruling that Benton did not have the authority to sell Gray's house to Minor, rendering the purported sale invalid. This ruling rested on two distinct but equally forceful conclusions—one factual and one legal. First, after hearing the witnesses' testimony at the hearing and considering the evidence presented, the court found that Benton had not shown that she and Gray were married. Second, the court concluded that, even if such a common-law marriage did exist, Kansas law did not permit the sale of estate property—including the house—without the court's permission in the probate case. Benton and Minor assert that each of these conclusions was incorrect and should be reversed.

Our review of these claims is guided by our role as an appellate court. Appellate judges do not hear live testimony. In other words, we were not present to hear the witnesses' explanations, observe their demeanor, or assess their credibility during the evidentiary hearing in this case. Rather, that role is entrusted to the fact-finder—here, the district court.

For this reason, appellate courts do not reweigh evidence, reassess witness credibility, or redetermine factual questions. *Bicknell v. Kansas Dept. of Revenue*, 315 Kan. 451, Syl. ¶ 11, 509 P.3d 1211 (2022). Instead, we defer to a district court's factual findings when they are supported by substantial competent evidence in the record. *In re Estate of Farr*, 274 Kan. 51, Syl. ¶ 1, 49 P.3d 415 (2002). "Substantial competent evidence is such legal and relevant evidence as a reasonable person might accept as sufficient to support a conclusion." *Bicknell*, 315 Kan. 451, Syl. ¶ 10. We then determine whether those findings support the district court's legal conclusions. *In re Estate of Farr*, 274 Kan. 51, Syl. ¶ 1.

1.1. *The evidence supports a finding that Benton and Gray never married, so Benton never had a valid interest in the house.*

Benton and Minor primarily argue that Benton had the authority to sell Gray's house to Minor because she was Gray's common-law wife when he died. Benton claims that she and Gray became married sometime during their five-year relationship in Texas. Kansas courts recognize valid common-law marriages from other states. See K.S.A. 2022 Supp. 23-2508. Whether a common-law marriage exists is a question of fact. *Driscoll v. Driscoll*, 220 Kan. 225, Syl. ¶ 2, 552 P.2d 629 (1976).

In Texas, a valid common-law marriage requires a couple to have a present agreement to be married, live together, and hold themselves out to the public as married. *Small v. McMaster*, 352 S.W.3d 280, 282-83 (Tex. App. 2011). Kansas requires the same, except it does not require cohabitation. *Anguiano v. Larry's Electrical Contracting L.L.C.*, 44 Kan. App. 2d 811, 814, 241 P.3d 175 (2010). In both states, the party asserting a common-law marriage has the burden of proof. See 44 Kan. App. 2d at 814; *Small*, 352 S.W.3d at 282-83.

Here, the district court found that Gray and Benton had the capacity to marry, held themselves out as married, and lived together in Texas. But the court found that they were not common-law married because they had no present agreement to be married—a requirement in both Texas and Kansas.

This finding—the absence of a present agreement to be married—is supported by evidence in the record. To meet the present-agreement requirement, a couple must intend to *be* married, not intend to *get* married. See *Anguiano*, 44 Kan. App. 2d at 815-16; *Gary v. Gary*, 490 S.W.2d 929, 932 (Tex. Civ. App. 1973) ("[I]t is not sufficient to agree on present cohabitation and future marriage."). During the evidentiary hearing, Benton suggested multiple times that she and Gray had agreed to marry *in the future* but never had a *present intent* to be married. She told the court that she and Gray "were getting

married when he got back" and that it "never happened" because he died in Wichita. She later testified that Gray "passed away before we could do anything." And she reiterated these statements again later in the hearing. Based on these repeated statements, the court found that Benton and Gray had no present agreement to be married, even if they may have planned to marry at some later date.

Minor and Benton emphasize other evidence from the hearing that tended to show the existence of a marriage, such as letters from Gray to Benton addressed "To my wife" and the fact that Gray received mail at Benton's house. But this was all evidence that the district court considered and weighed when making its decision, and the court gave more weight to Benton's statements during her testimony. Appellate courts do not reweigh evidence. *Bicknell*, 315 Kan. 451, Syl. ¶ 11.

Minor and Benton also point to several affidavits that the district court refused to admit on hearsay grounds. These affidavits are not in the record but seem to be from people who knew Gray and Benton as husband and wife. But neither Minor nor Benton have identified—before the district court or on appeal—any hearsay exception that would allow their admission. See *State v. Davidson*, 315 Kan. 725, 728, 510 P.3d 701 (2022) (failing to argue a point waives or abandons it). And the affidavits, which reflect how people viewed Gray and Benton, show that they held themselves out as married, not that they had a present agreement to be married.

Benton's name change similarly has no effect on this finding. Minor and Benton argue that Benton's name change during the district-court proceedings—from Benton to Benton-Gray—shows an intention to be married. But granting a name-change petition is different from recognizing a common-law marriage. Benton's unilateral name change after Gray's death does not prove that they had a present agreement to be married when he was alive.

Finally, Minor and Benton assert that the administrator admitted that Gray and Benton were married during settlement negotiations as Bauer was attempting to sell the property. Settlement offers are generally inadmissible in judicial proceedings. See K.S.A. 60-452; *Hess v. St. Francis Regional Medical Center*, 254 Kan. 715, 721, 869 P.2d 598 (1994). And the record shows that Bauer's offer proposed to recognize Benton as Gray's common-law wife "solely for purposes of resolving the sale but without prejudice to our defenses if the matter is not settled." Even if this offer were admissible, it did not recognize Benton and Gray as married; it conditioned that recognition on Benton's acceptance and reserved the right to argue there was no marriage if she rejected the offer, which evidently is what happened.

Substantial competent evidence supports the district court's finding that Benton was not Gray's common-law wife. Thus, she was not his heir and had no legal interest in any of his estate's property. See K.S.A. 59-506 (if intestate decedent leaves a child and no spouse, all the decedent's property passes to the child). Benton had no authority to sell the house to Minor, and the district court did not err when it set aside that purported transfer.

1.2. *Even if Benton had married Gray, the district court had to approve any sale of estate property, including the house.*

The district court's ruling that Benton's purported sale of the house was invalid is correct for another independent and equally important reason: Because the house was property of the estate, it could not be transferred without an order approving that sale in the probate case.

When a person dies without a will, his or her estate is subject to probate proceedings. See K.S.A. 59-101 et seq. The administrator of the person's estate has extensive authority over the estate's property during these proceedings. See K.S.A. 59-1401; *In re Estate of Area*, 51 Kan. App. 2d 549, Syl. ¶ 1, 351 P.3d 663 (2015). Generally, the administrator has "a right to the possession of all the property of a resident

decedent." K.S.A. 59-1401. Because the administrator takes possession of a decedent's property, it is the administrator who "may sell real estate of a decedent." K.S.A. 59-1410(a); see also K.S.A. 59-2303(a).

Applying these principles here, Benton could not sell Gray's house without the probate court's approval, regardless of whether Benton and Gray were married before his death. When Gray died intestate and the probate proceedings began, Bauer, as the administrator, took possession of Gray's property under Kansas law. And it was Bauer who could sell it—through the probate proceedings and with the probate court's permission. See K.S.A. 59-1410(a). And because Gray had a son, Benton would have had—at best—a 50% interest in the estate's property and thus still could not have unilaterally sold the house. See K.S.A. 59-504.

Kansas law also requires that a private sale of a decedent's real estate cannot be for less than 75% of the appraised value. K.S.A. 59-2305(b). Even accepting the low-end appraisal value of $30,000—which is significantly lower than the county's value of nearly $50,000—Benton's sale to Minor for $10,000 falls far short of the 75% requirement. This deficiency provides another reason why Benton's sale did not conform to Kansas law.

Regardless of Benton's marital status, she lacked any legal authority to sell Gray's house without the probate court's approval. The district court did not err when it found Benton's sale to Minor was invalid and void.

2. *Minor has no legal interest in the property.*

Minor submits several additional arguments as to why he believes that—regardless of Benton's relationship with Gray and interest in the property—he should be permitted to keep the house. Again, we are not swayed by these assertions.

Minor first argues that he purchased the property in good faith and is thus protected as a bona fide purchaser under provisions of the UCC that favors some purchasers of goods when the seller had voidable title. See K.S.A. 2022 Supp. 84-1-201(9); K.S.A. 84-2-403. But the UCC does not apply here.

Article 2 of the UCC governs sales and "applies to transactions in goods." K.S.A. 84-2-102. Goods are "all things . . . which are movable at the time of identification to the contract for sale." K.S.A. 84-2-105(1). Real estate is not a good under the UCC. See *Riley State Bank v. Spillman*, 242 Kan. 696, Syl. ¶ 4, 750 P.2d 1024 (1988) ("The UCC does not apply to interests in or liens upon real estate."); 77A C.J.S. Sales § 16; see also *Johnson v. Olson*, 92 Kan. 819, 829-30, 142 P. 256 (1914) (pre-UCC case finding that "'goods and effects'" did not include real estate). Because the UCC governs transactions in goods, not real estate, its provisions do not apply to Minor's purchase from Benton. That sale was of a house, not movable goods. The district court correctly found that the UCC does not apply.

Minor lists various other legal provisions that seek to protect bona fide purchasers, but these provisions, like the UCC, do not apply here. For example:

- Minor cites a provision of the Uniform Simultaneous Death Act. See K.S.A. 58-714(b). But as its title suggests, this law addresses situations in which two people connected to the same estate die close in time and serves to simplify the probate process when that happens. See K.S.A. 58-708 et seq. This case is not such a situation.

- Minor notes the duty of good faith in the Kansas Uniform Common Interest Owners Bill of Rights Act. See K.S.A. 2022 Supp. 58-4604. But this provision does not apply either because there is no evidence Gray's house is part of a

common-interest community. See K.S.A. 2022 Supp. 58-4602(f) (defining common-interest communities).

- And Minor lists various provisions from laws of other states to support his commercial-law arguments. These provisions do not govern in Kansas, and Minor points to nothing in Kansas law that would validate his deed in law or equity.

Even if any of these provisions applied to Minor, the district court found that Minor had not purchased the house in good faith. A bona fide purchaser is someone who "has made the purchase without notice of a mistake in the title." *Baraban v. Hammonds*, 49 Kan. App. 2d 530, 540, 312 P.3d 373 (2013), *rev. denied* 300 Kan. 1103 (2014). Minor—who the district court found was a "sophisticated real estate owner of multiple properties"—bought a house from someone whose name was not on the title for far less than what the law required. And when the title company informed him that probate was necessary, he continued to try to sell the house without the probate court's approval.

Minor has not demonstrated that he has any valid interest in Gray's property. The district court did not err in setting aside his deed.

3. *Minor's and Benton's remaining arguments lack merit.*

Minor and Benton make several additional arguments as to why they believe they should prevail in this appeal, largely alleging wrongdoing by the district court and the administrator. Some basic principles govern many of these remaining claims. Courts do not have to accept vague, conclusory, and unsupported allegations when reviewing a claim. See *Doe v. Kansas State University*, 61 Kan. App. 2d 128, 149-52, 499 P.3d 1136 (2021) (rejecting plaintiff's attempt to support elements of claim with conclusory and unsupported allegations). And for a court to decide a claim, the party raising it must have "'a personal interest in [the] court's decision'" and suffer "'some actual or threatened

injury as a result of the challenged conduct.'" *Baker v. Hayden*, 313 Kan. 667, 674, 490 P.3d 1164 (2021).

These principles help explain why Minor's and Benton's remaining claims are unavailing. For example, Minor and Benton allege the administrator and district court had a duty to notify them when the probate proceedings began. They rely on K.S.A. 2022 Supp. 59-2233(a), which requires notice to "the surviving spouse," along with due-process notice rights under the Constitution. But the district court found that Benton and Gray never married, so she was not his surviving spouse. And Minor never had a valid interest in the house. Because they had no cognizable interest in the house or the estate, there was no duty to notify them when the proceedings began, whether under Kansas statutes or due-process principles. Minor's and Benton's claims about improper service and breaches of fiduciary duty by the administrator fail for the same reasons; because they had no interest in the estate's property, there was no duty to serve them when the probate proceedings began, and the administrator owed them no fiduciary duties.

Minor and Benton also claim the administrator committed trespass and theft and violated forcible-detainer statutes through actions on the property—like cleaning it—after their purported sale. But as we have found, neither Minor nor Benton ever had a valid interest in the property. The administrator did. Without any interest in the property, Minor and Benton have no standing to claim that the administrator or district court violated Minor's and Benton's property rights.

Finally, Minor and Benton allege that the administrator and district court acted unethically, fraudulently, and in a biased manner. On appeal, Minor and Benton have submitted a litany of filings raising similar allegations against judges of this court who denied their appellate motions. These arguments are conclusory and lack legal support. And we have thoroughly reviewed the record and find no indication of such conduct.

Minor and Benton mention several other issues in their briefs. We have reviewed them all, along with the record on appeal, and we conclude they lack merit. The district court did not err in granting the estate's motion to set aside Minor's invalid deed.

Affirmed.