FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN THE MATTER OF THE ESTATE OF THEODORE HENRY ANASTASI, Deceased.	)	
LONNA ANASTASI CLARK and **MICHAEL CHILDS**, Executor for the Estate of Theodore Henry Anastasi, Deceased,	)	
Appellants/ Cross-Appellees	)	
vs.	)	
THEODORE ANASTASI, SR., Conservator of the Theodore Henry Anastasi Conservatorship,	)	8-564 88-125
Appellee/ Cross-Appellant.	)	

Appeal from the Iowa District Court for Shelby County (No. 9956), Leo F. Connolly, Judge.

Lonna Clark, wife of the decedent, appeals and Theodore Anastasi, Sr. cross-appeals the district court's limited adoption of the referee's report concerning the conservatorship of the decedent. **AFFIRMED.**

Ken Sojka and Gregg Rosenbladt of Buckley & Sojka Law Office, Harlan, for appellants.

Robert Kohorst of the Kohorst Law Firm, Harlan, for appellees.

Considered by Hayden, P.J., and Sackett and Habhab, JJ.

HABHAB, J. 2

Lonna Clark, wife of decedent, Theodore Henry Anastasi, Jr., appeals the district court's limited adoption of the referee's report concerning the conservatorship of the decedent. Lonna contends the district court erred in finding 1) the three intermediate reports were final and that further inquiry was barred by Iowa Code section 633.36; 2) the Quick mobile home was held in joint tenancy by the conservator and the decedent, rather than in tenancy in common; and 3) that the conservator should be held personally liable for the costs of the referee's investigation and report. The conservator, father of the decedent, cross appeals, contending the district court erred in ruling that he owes the conservatorship $1,266.16. We affirm.

As provided by Iowa Code section 633.33, this action was tried in equity. We, therefore, review de novo. Iowa R. App. P. 4. We give weight to the trial court's findings but are not bound thereby. Iowa R. App. P. 14(f)(7).

In the fall of 1972, Theodore Henry Anastasi, Jr. (Ted, Jr.) was disabled from an accidental shooting. On November 20, 1972, his father, Theodore Anastasi, Sr., was named his conservator. The conservator sought and obtained a monetary settlement for the shooting. The settlement funds are part of the conservatorship.

The conservator filed intermediate reports in 1975, 1978, and 1980. The court in 1980 authorized the continuance of the conservatorship and permitted the filing of intermediate reports every two years.

It is without dispute that in each of the three intermediate reports notice of hearing thereon was given the ward, a guardian ad litem was appointed, and an answer by the guardian ad litem approving each report was filed. Thereafter, and after notice of hearing, an order of court entered approving the intermediate report and the accounting of the conservator.

The ward, Ted, Jr., and Lonna, the objector, were married on April 11, 1981. Lonna filed for divorce on August 5, 1981. A divorce stipulation was signed, but the waiting period had not yet expired. On October 5, 1981, Ted, Jr. died as a result of injuries received from an automobile accident. Lonna is his surviving spouse.

On October 6, 1981, Ted, Sr. was appointed administrator of his son's estate. Three days later Lonna filed her petition asking that she be appointed co-administrator and by motion asked that Ted, Sr. be removed as administrator. Ted, Sr. was removed and a temporary administrator appointed on November 16, 1981.

On June 30, 1986, a referee was appointed by stipulation of both parties to make factual inquiries concerning matters requested by the legal representative of

Ted, Jr.'s estate. The referee subsequently filed his report. Thereafter, objections were filed by both parties. A number of the objections relate to the intermediate reports of 1975, 1978, and 1980. The conservator argues the contents of the intermediate reports cannot be challenged in view of section 633.36 of the Code of Iowa. The trial court determined that res judicata applied under the operation of section 633.36 and held that the intermediate reports could not be challenged. The appellant Lonna Anastasi Clark appeals that ruling along with two others. The appellee cross-appeals. We address those rulings.

I.

The appellant first argues the trial court "erred in ruling that Iowa Code sections 633.36 and 633.37 give preclusive res judicata effect to the three intermediate conservatorship reports filed and approved herein." To strengthen her argument, she contends "there was no identity of time, no identity of issues, no identity of parties, and none of the issues raised at the trial court level were ever litigated when the three intermediate reports were approved by the court." The appellant then directs to our attention the elements that must be established before the doctrine of res judicata may be applied.

We believe this issue is resolved adversely to the appellant by virtue of section 633.36 of the Code. That section provides:

> All orders and decrees of the court sitting in probate are final decrees as to the parties having notice and those who have appeared without notice.

It is undisputed, as it relates to the three intermediate reports, that (1) each report was filed and a time and place for hearing thereon was fixed by the court; (2) a guardian ad litem was appointed; (3) the ward and the guardian ad litem were given notice of the hearing; (4) the guardian ad litem appeared and filed an answer approving each report; and (5) an order of court entered approving the report and the accounting of the conservator.

As it relates to the orders approving the reports, the first order provides in part:

> That the said first report and accounting of the conservator filed herein has been audited and approved by the guardian ad litem for and on behalf of said ward and the conservator, having been examined in open court with reference to his accounting, and having made a full explanation thereof and disclosure of his activities and his administration of said trust, and the court is satisfied from the evidence that said accounting is complete and true and for the benefit of said ward and the same should be allowed and settled.
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> * * *
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> WHEREFORE, IT IS ORDERED AND ADJUDGED by the Court that the First Report and Accounting of the Conservator as filed herein be and the same is hereby approved and allowed and the conservatorship's administration of this conservatorship . . . is approved and confirmed as being in the best interest of the ward.

And the second and third orders provided in part:

> Said report and accounting of the conservator herein has been approved by the guardian ad litem for and on behalf of said ward, is correct and true and should be approved and confirmed.
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> * * *
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> WHEREFORE IT IS ORDERED AND ADJUDGED by the court that the report and accounting of the conservator is hereby allowed, approved, and fully settled by the court, as required by law, ...

We affirm the trial court as to its findings that res judicata applied under the operation of section 633.36. The purpose of section 633.36 is to allow a prompt appeal from those orders and rulings on probate matters during the administration of the estate rather than at the hearing on the final report. Matter of the Estate of Troster, 331 N.W.2d 123 (Iowa 1983). No appeal from those orders was taken; thus, they are final decrees as to the parties having notice.

The appellant next directs to our attention section 633.37, which provides: "All orders entered without notice or appearance are reviewable by the court at any time prior to the entry of the order approving the final report." However, that section does not apply to the three intermediate reports for the orders were entered after notice had been given to all interested parties.

The appellant cites us to the case of Des Moines Savings Bank v. Krell, 176 Iowa 437, 156 N.W. 858 (1916), as authority for her position that the trial court is not precluded from considering the merits of the issue raised

in intermediate reports. But Krell was decided prior to the enactment of section 633.36. In addition, the order the court was referring to in Krell was entered ex parte. Krell, 176 Iowa at 444, 156 N.W. at 861.

As it relates to section 633.37, the appellant next contends that she did not receive notice of the hearing on the intermediate reports nor did she make an appearance. She argues that she later became an interested party to the proceedings through her marriage to the ward and "because of this marriage . . . came to have an interest in the estate, and therefore the conservatorship."

We agree that as the surviving spouse of Ted, Jr., she now has an interest in the estate and the conservatorship. But as to the previous orders of court, her rights can rise no higher than those of her deceased husband.

The term "res judicata" has been used extensively in the briefs. Literally, it means a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment. 46 Am. Jur. 2d Judgments § 394, p. 558.

> . . . the doctrine of res judicata is that an existing final judgment rendered upon the merits, without fraud or collusion, by a court of competent jurisdiction, is conclusive of causes of actions and of facts or issues thereby litigated, as to the parties and their privies, in all other actions in the same or any other judicial tribunal of concurrent jurisdiction.

Id. at 558-59. We parenthetically note that the appellant

did not assert to the trial court or to us that fraud or collusion was used at the time the intermediate reports were filed and the orders approving the same obtained. Thus, neither are considered or given weight in this opinion.

As it relates to privity, there is not much question of its existence between the decedent, Ted, Jr., who was a party to the original intermediate report proceedings, and Lonna, who acquired her rights through him. See 46 Am. Jur. 2d Judgments § 532, p. 683. Thus, the orders of court are conclusive as to her as to the facts and issues litigated in those reports.

But the appellant then argues that in making her objections to those reports, she raised issues that were not brought to the court's attention at the time of their approval. She asserts that "some of the conservators [sic] actions were not proper, and some of the expenditures not justified."

In this respect the actions and expenditures complained of are not specifically identified in the briefs. Nonetheless, from our review of the record, it is clear that the appellant is attacking the actions and expenditures of the conservator that were presented, covered, and considered in the intermediate reports to the court and the orders approving the same.

As we stated previously, the ward and guardian ad litem had notice of the hearing on those reports. They were aware of their contents and the various activities of the conservator. They raised no objections. Absent fraud or collusion, which is not asserted here, the decrees approving the same are final as to them and those in privity to them. It is settled law in this state that:

> An adjudication in a former suit between the same parties on the same claim is final as to all matters which could have been presented to the court for determination. A party must litigate all matters growing out of his claim at one time and not in separate actions.

B & B Asphalt Company v. T. S. McShane & Co., 242 N.W.2d 279, 286 (Iowa 1976).

We affirm the trial court on this issue.

II.

Next, Lonna asserts the district court erred in ruling that the mobile home purchased by the conservator and his son from Bessie Quick was held in joint tenancy with full rights of survivorship. In this respect, Iowa Code section 557.15 states that a conveyance to two or more persons in their own right creates a tenancy in common, unless a contrary intent is expressed. This contrary intent may be determined by the parties' statements and actions. In re Estate of Baker, 247 Iowa 1380, 1384, 78 N.W.2d 863, 865 (1956).

The trial court held that it was the intent of the parties at the time of purchase and through their

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subsequent conduct, that ownership of the mobile home be as joint tenants. In our de novo review, we give weight to the trial court's findings, especially when the demeanor of witnesses and their credibility are of great importance. Iowa R. App. P. 14(f)(7). Coupling this finding with the circumstances of the parties at the time of purchase, the obligations incurred on the unpaid balance of the note along with the manner of payment, we affirm the trial court under this division.

III.

Lonna asserts the conservator is personally liable for the costs of the referee's investigation and report. She argues that because of the conservator's negligent reporting, the referee's investigation was made more difficult and more costly.

The order authorizing payment of the referee's fee was entered September 8, 1987. All interested parties were given notice of the time and place of hearing on the application for fees. No objections were lodged. Only objections that are specified to the trial court shall be considered on appeal. Iowa R. Civ. P. 196. Consequently, the appellant did not properly preserve error for our consideration. But even if error had been preserved, we believe the method of payment as ordered was proper.

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IV.

The conservator cross-appeals arguing that he does not owe the conservatorship $1,266.16 for purchase of the Kimball mobile home. The evidence established that the mobile home was purchased for $2,000 and that half the purchase price was still owed at the time of the ward's death. We find the trial court properly considered this issue and decline to overturn its findings in that regard.

AFFIRMED.