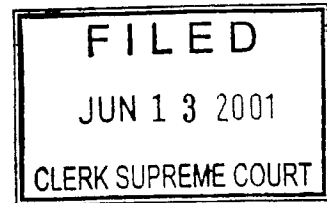


IN THE COURT OF APPEALS OF IOWA

No. 1-198 / 00-1074
Filed June 13, 2001



IN THE MATTER OF THE CONSERVATORSHIP OF
R. HAROLD SNIDER, Deceased,

ESTATE OF ROBERT HAROLD SNIDER,
Appellant,

vs.

GILBERT GARTON, Conservator,
Appellee.

Appeal from the Iowa District Court for Lucas County, Darrell J. Goodhue,
Judge.

The Estate of R. Harold Snider appeals a district court order approving the conservator's final report and amendments but entering judgment against the conservator for \$16,919.51 for delinquent taxes and misappropriated funds.

AFFIRMED.

Verle W. Norris, Corydon, for appellant.

Gilbert Garton, Chariton, pro se, appellee.

Considered by Sackett, C.J., and Huitink and Vaitheswaran, JJ.

VAITHESWARAN, J.

Harold Snider's heirs contend his conservator imprudently managed Snider's farmland. Although the district court agreed with the heirs, the court did not award them the full amount of damages they sought. On the heirs' appeal, we affirm.

I. Background Facts and Proceedings

Snider, a Lucas County landowner, had drinking and health problems. Following the death of his wife, he and his daughter petitioned for the appointment of a conservator. The court appointed Gilbert Garton. Garton was entrusted with managing Snider's finances, farmstead, personal property and day to day expenses.

The farmstead consisted of 495 acres of trees, brush and tillable land. A portion of the land was in the federal conservation reserve program, which compensates farmers for allowing their land to return to prairie grassland. See 16 U.S.C. § 3842. Garton managed the farmland by allowing it to be seeded for grass hay as it had been for years preceding his appointment, and by retaining a portion of the land in the conservation reserve program.

Garton annually filed reports with the court detailing his expenditures. After Snider died, his heirs filed objections to the reports, contending Garton made excessive repairs, used Snider's funds for himself, made unauthorized payments to Snider's brother, gave himself unapproved fees, sold farm property without the court's approval and at less than fair market value, incurred bank overdraft and penalty charges, and did not put the farmland to its best use. The

district court agreed with the heirs on most of their objections and entered judgment in favor of the estate and against Garton in the amount of \$16,919.51.¹ This sum did not include the profits the heirs claimed they lost by Garton's asserted failure to put the farmland to its best use.

The heirs appealed. Garton did not cross-appeal, nor did he file a responsive brief.

II. Scope of Review

Our review of a ruling on objections to a probate report is de novo. Iowa Code § 633.33 (1997); *In re Estate of Wiese*, 257 N.W.2d 1, 3 (Iowa 1977). We give weight to, but are not bound by, the district court's findings. *Wiese*, 257 N.W.2d at 3.

III. Management of Farmland

Conservators have a duty to protect and preserve the estate, invest it prudently, provide an accounting, perform all other duties required by law, and deliver the assets to the ward upon termination of the conservatorship. Iowa Code § 633.41. They must give "personal care" in managing the estate. *In re Moore's Guardianship*, 227 Iowa 735, 737, 288 N.W. 880, 881 (1939); *In re*

¹ The court held Garton liable for the following amounts, but credited him the sums he had already repaid:

- 1) \$1107 in delinquent tax penalties and \$615 in overdraft charges accrued by conservator;
- 2) \$3200 paid to Snider's brother;
- 3) \$14,479 converted by conservator for his own personal use;
- 4) \$8855.00 in conservator's fees.

Brubaker's Guardianship, 214 Iowa 413, 416, 239 N.W. 536, 537-8 (1931).

Generally, conservators act as fiduciaries and may be held liable for breach of their fiduciary duties, including negligence, nonfeasance, malfeasance, or willful or wanton conduct. Iowa Code § 633.649; 633.633A; 633.160.² Conservators also have a duty to manage investments prudently. Iowa Code § 633.123.³ This

² These code sections state in relevant part:

633.649. Powers of conservators--same as all fiduciaries

Except as expressly modified herein, conservators shall have the powers relating to all fiduciaries as set out in sections 633.63 to 633.162.

633.633A. Liability of guardians and conservators

Guardians and conservators shall not be held personally liable for actions or omissions taken or made in the official discharge of the guardian's or conservator's duties, except for any of the following:

1. A breach of fiduciary duty imposed by this Code.
2. Willful or wanton misconduct in the official discharge of the guardian's or conservator's duties.

633.160. Breach of duty

Every fiduciary shall be liable and chargeable in the fiduciary's accounts for neglect or unreasonable delay in collecting the credits or other assets of the estate or in selling, mortgaging or leasing the property of the estate; for neglect in paying over money or delivering property of the estate the fiduciary shall have in the fiduciary's hands; for failure to account for or to close the estate within the time provided by this Code; for any loss to the estate arising from the fiduciary's embezzlement or commingling of the assets of the estate with other property; for loss to the estate through self-dealing; for any loss to the estate arising from wrongful acts or omissions of any cofiduciaries which the fiduciary could have prevented by the exercise of ordinary care; and for any other negligent or willful act or nonfeasance in the fiduciary's administration of the estate by which loss to the estate arises.

³ This code section was repealed while this action was pending. See 1999 Acts, ch. 125, § 108, 109; see also Iowa Code §§ 633.4301-4309, Uniform Prudent Investment Act.

provision has been applied to the management of estates in certain areas other than investment. See *In re Wiese's Estate*, 257 N.W.2d 1, 5 (Iowa 1977).

The heirs' primary contention on appeal is that the district court invoked and applied the wrong legal standard in evaluating Garton's fiduciary duty to manage the farm. They maintain the district court did not evaluate Garton's conduct using general principles of fiduciary duty and liability as set forth in Iowa Code sections 633.641, 633.633A, and 633.160 but instead relied on what they characterize as the less stringent standard contained in Iowa Code section 633.123. Accordingly, the heirs maintain the court "failed to consider the Conservator's negligence, nonfeasance and willful or wanton misconduct." We disagree.

Assuming without deciding that the standard set forth in Iowa Code section 633.123 differs from the general fiduciary standards set forth elsewhere in the probate code, we nevertheless are convinced the court evaluated Garton's performance using both standards. For example, the court expressly concluded Garton mismanaged Snider's funds, engaged in self-dealing, failed to properly account for assets, paid a third party with Snider's assets, and failed to obtain court approval for the sale of certain farm assets, all in violation of the general fiduciary duties contained in the probate code. See Iowa Code §§ 633.155; 633.157; 633.387; 633.388; 633.389; and 633.671. There is no question, therefore, that the court considered Garton a fiduciary and concluded he breached certain fiduciary duties owed to Snider.

With respect to Garton's obligation to manage the farmland, it is true the court only found he breached the standards set forth in the model prudent person investment act rather than his general fiduciary duties. *Compare* Iowa Code § 633.123 *with* Iowa Code §§ 633.641 and 633.160. However, the heirs concede that, under either standard, the key question was whether "the Conservator failed to give his personal care to the management of the Ward's farm real estate." The court in fact answered yes to this question, finding Garton "did not view the farm or explore other rental arrangements." The court further found Garton "could have easily made a cursory investigation as to the most advantageous way to utilize the farm and should have done so." Therefore, although the court did not cite to portions of the probate code that address negligence, malfeasance, and willful and wanton misconduct, its findings and conclusions are precisely those sought by the heirs under those more general standards.

What the heirs really appear to be challenging is the court's failure to award them damages for lost profits on the farmland. At trial, the heirs called D.J. Reynolds, a farmer and real estate appraiser, who opined that Garton could have earned close to \$40,000 more on the farmland than he did had he row cropped a portion of the land and used another portion as pasture. However, Reynolds conceded he had not considered the costs to Snider of tilling the land and mending fences for a pasture and had not discussed the soil conditions with the person who actually farmed Snider's land. That farmer stated Snider's land was not fertile enough to raise a crop and could not be used to pasture cows because of the condition of the fences. He stated it was not feasible to put large

sums of money into the farm because they would likely see no return on the investment.

The district court expressly weighed these competing land use arguments, as follows:

Garton continued to treat the farmland as Harold and his late wife had treated it. The house was rented and the hay was cropped on a 50/50 basis. The resulting hay was sold. That part of the farm that was in the Conservation Reserve Program was left in CRP. During Garton's administration the objectors produced evidence the farm income could have been as much as \$39,733 more than was, in fact, garnered. A portion of this income would have been dependant on pasture rent, and the condition of the fences are, at best, suspect. There was testimony that more of it should have been put in the CRP without evidence as to whether or not it was eligible. There was also suggestions [sic] it should have been fertilized or reseeded, but whether or not this would have been cost effective was not explored. In any event, reseeding and fertilizer would not be consistent with Harold's and his wife's operation of the farm. On the other hand, Garton did not view the farm or explore other rental arrangements.

The record contains ample support for these findings. On our de novo review, we conclude the heirs were not entitled to damages for lost profits on the farmland because evidence of these damages was speculative. See Iowa Code § 633.160 (noting fiduciary liable for acts or omissions resulting in "loss to the estate"); *Data Documents, Inc. v. Pottawattamie County*, 604 N.W.2d 611, 616 (Iowa 2000); *Sargent v. Frank Cram & Sons*, 194 Iowa 152, 153, 186 N.W. 916, 918 (1922). Therefore, the district court acted equitably in declining to award the heirs damages for lost profits on the land.

The judgment of the district court is affirmed.

AFFIRMED.