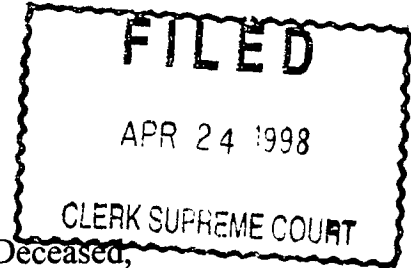


IN THE COURT OF APPEALS OF IOWA

No. 7-773 / 97-531



IN THE MATTER OF THE ESTATE OF DONALD OHRT, Deceased,

RANDALL OHRT, Individually,
Appellant.

Appeal from the Iowa District Court for Benton County, Thomas M. Horan,
Judge.

Randall Ohrt appeals a district court order calculating the total value of assets
in the deceased's estate. **REVERSED.**

Ross Hauser of Shea Law Offices, Cedar Rapids, for appellant.

Morris L. Eckhart of Milroy, Eckhart & Thompson, Vinton, for appellees
Linda Uthoff and Sandra Evans.

Heard by Huitink, P.J., and Streit and Vogel, JJ.

VOGEL, J.

Randall Ohrt appeals the district court calculation of the amount he is to repay the estate of his father, Donald Ohrt. This is the third appeal of issues in this estate as interpretations of the two prior remands have only generated further litigation.

Background facts. Donald Ohrt died testate in Benton County in 1990. He is survived by two daughters, Linda Uthoff and Sandra Evans, and one son, Randall. Donald's will provided an option to purchase farmland in favor of Randall, who had been in a long-term farming operation with his father. The will also gave to Randall all farm machinery, tools, and an automobile, but made payment of "debts, claims and taxes" payable from the personal property in the estate.

Donald's will provided in part:

Article I. I direct that . . . all debts and claims filed against my estate and all federal estate taxes and state inheritance taxes shall be paid from the personal property of my estate before any distribution of said property be made as hereinafter provided,

Article II. I hereby give and bequeath to my son, Randall Ohrt, all of my farm machinery and equipment, all farm tools and my automobile.

As Randall was farming the land, he "distributed" the personal property to himself by using and depreciating the equipment. He also sold the car to his son.

Our supreme court ruled that Randall's distribution of personal property to himself violated the terms of the will, and remanded the case, requiring him "to either (1) reimburse the estate for the appraised value of any personal property distributed

to him as may be necessary to satisfy estate debts, or (2) reclaim the distributed assets for the estate and arrange for their sale to satisfy estate debts.” *In re Estate of Ohrt*, 516 N.W.2d 896, 900 (Iowa 1994). The parties agreed option one was the only feasible option under the circumstances of continued use and sale of some of the equipment.

On remand, the district court held Randall was required to pay the estate \$96,725 within ninety days of the date of the ruling as reimbursement of the value of the personal property distributed to him. Randall appealed and this court ruled:

The amount Randall is to pay is only that amount “as may be necessary to satisfy estate debts.” Until that amount is fixed, the amount Randall is to reimburse cannot be determined. We, therefore, remand this case with instructions that a determination be made as to the assets available to satisfy the estate debts, claims, and taxes, and the amount of those debts, claims and taxes. The difference in these two amounts, *if any*, is the amount the supreme court directed Randall to reimburse the estate.

In re Estate of Ohrt, 550 N.W.2d 181, 185-85 (Iowa App. 1996) (emphasis added).

On remand, the district court ruled:

The value of the assets available to satisfy estate debts, claims and taxes as of December 15, 1996, . . . is the sum of \$58,029.38. The amount of debts, claims and taxes due and payable . . . on December 15, 1996 is the sum of \$366,505.03. The difference in the assets available to satisfy estate debts, claims and taxes and the amount of debts, claims and taxes due and payable . . . is \$308,475.65. Therefore Randall Ohrt shall pay the sum of \$96,725 to the estate of Donald Ohrt, deceased, within 90 days of the date of this ruling all as required by the Last Will and Testament of Donald Ohrt

Scope of review. We review cases in equity de novo. Iowa R. App. P. 4; Iowa Code § 633.33 (1997). We must examine the entire record and adjudicate anew issues properly preserved. *In re Estate of Welch*, 534 N.W.2d 109, 111 (Iowa App. 1995).

Calculation of estate debt, claims and taxes. Prior to distributing assets of the estate to the distributees, the personal representative is responsible for paying debts and charges. Sheldon F. Kurtz, *Kurtz on Iowa Estates* § 13.1 (3d ed. 1995). See Iowa Code section 633.3(10). Debts are defined as including “liabilities of the decedent which survive, whether arising in contract, tort or otherwise.” Iowa Code § 633.3(10); Kurtz, §13.1. Iowa Code section 633.3(4) defines charges to “include costs of administration, funeral expenses, costs of monument, and federal and state estate taxes.” *Id.*; Kurtz, § 13.1.

The Iowa Code does not define “claims,” but the “non-claims statute,” section 633.410, “clearly contemplates that both debts and charges are encompassed within the word ‘claims.’” Kurtz, §13.1.

The trial court’s ruling made the date of calculating assets against debts, claims and taxes the date of the most recent accounting for the estate, (December 15, 1996), coinciding with the remand hearing. However, this takes a snapshot picture of the condition of the estate at an arbitrary moment not contemplated under the will. The estate is an entity unto itself, with income and expenses that vary significantly from time to time, in large part dependant upon the sound tax advice of the professionals

hired to handle the administration of the estate. The determination of income and expenses can be timed to take advantage of favorable tax consequences and is not indicative of financial status of the estate in other than an arbitrary freeze-frame moment. For this reason, we return to the date of death values, subject only to claims made within the statutory time limit under section 633.410. It is the only unassailable date to make the proper accounting.

With the instructions in the will to pay debts, claims, and taxes from personal property, we first examine the inventory of assets filed and the federal 706 estate tax return. We find the tax return to be more accurate in reporting the date of death values and for the purpose of this calculation, rely on their accuracy. Schedule B shows stocks and bonds valued at \$39,778.36. Schedule C reveals a bank account and certificates of deposit totaling \$49,107.73. Schedule F indicates growing crops, machinery, equipment, and crops in storage valued as \$145,531.56 (of this \$96,735 appears to be the property distributed to Randall). These three schedules itemized total \$234,417.65.

The debts are shown on Schedule J in the amount of \$48,754.52; Schedule K debts are \$68,075.26. Iowa inheritance tax was paid in the amount of \$6457.27. There was no federal estate tax. There were no claims filed within the statutory time period. These debts and taxes total \$123,287.05.

It is clear the personal property assets exceed the total of debts, claims, and taxes. The supreme court's instructions were for Randall to reimburse the estate, "as may be necessary to satisfy estate debts."

Having netted the personal property assets and debts, claims, and taxes as of the date of death, we find that Randall owes nothing back to the estate.

Costs on appeal are assessed to the appellees.

REVERSED.