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IN THE COURT OF APPEALS OF IOWA

IN THE MATTER OF THE ESTATE OF)

EVA FRANKS, a/k/a EVA M. FRANKS,)
a/k/a EVA R. FRANKS, Deceased.)

DONALD M. ROBB,)
Appellant.)

Filed March 31, 1980

0-21
2-63777

Appeal from Linn District Court, Robert O. Osmundson, Judge.

Objector appeals trial court order overruling his objection to final report of administrator of decedent's estate. Affirmed.

William H. Roerman, Cedar Rapids, for defendant-appellant.

D. J. Smith, Cedar Rapids, for appellee, George Fiala.

Heard by Oxberger, C.J., Donielson, Snell, Carter and Johnson, JJ.

DONIELSON, J.

Objector, Donald G. Robb, appeals trial court order overruling his objection to final report of administrator of the estate of decedent, Eva Franks. Donald contends he should have been included as an heir to decedent's estate because he was equitably adopted by decedent's half sister. We affirm the trial court's judgment.

Our review is de novo. Iowa R. App. P. 4. We give weight to the trial court's fact-findings, especially when considering witnesses' credibility, but are not bound by them. Iowa R. App. P. 14(f)(6).

I.

Eva Franks died intestate November 24, 1975, leaving no spouse or direct decedents. The final report of the estate's administrator, filed February 26, 1977, named George Fiala, half brother of the decedent, as the sole heir and distributee of the estate. At the hearing on the final report, Donald filed an objection claiming he was entitled to a share of decedent's estate because he had been equitably adopted by decedent's half sister, Rose Fiala Robb.

The matter was tried to the court on February 7, 1979. Donald testified he was born in January 1918 and began living with Rose Robb and her husband Amos Robb in August 1918. He testified further he was always treated as the Robbs' natural son, and looked to them as his natural parents. However, when he reached age fourteen or fifteen, Rose told him he was adopted, but she never formally adopted him. Rose died in 1942 and, shortly thereafter, Amos successfully petitioned to legally adopt Donald. The trial court overruled Donald's objection, finding that decedent was not a privy of Rose and Amos and thus her estate and heirs were not estopped from asserting the invalidity of Donald's alleged status as the adopted son of Rose.

II.

We, like the trial court, find it unnecessary to address the issue whether Donald is the son of Rose by equitable adoption or adoption by estoppel. Even assuming adoption by either method is proved, the determining issue is whether the decedent's estate or heirs are estopped to assert the invalidity of Donald's alleged status as the adopted son of Rose. We hold decedent's estate or heirs are not estopped from asserting Donald's invalid legal adoptive status since Eva was not a privy of Donald's alleged adoptive

parents, Rose and Amos. Nor do we find justice or equity demand we allow Donald to share in decedent's estate.

It is well settled rights of inheritance can be acquired only by strict compliance with the statutes governing adoption. In re Estate of Painter, 246 Iowa 307, 309, 67 N.W.2d 617, 618 (1954). However, a person whose adoption was not formally or legally accomplished may attain certain property rights under the theory of adoption by estoppel. Id.; see Bergman v. Carson, 226 Iowa 449, 454, 284 N.W. 442, 444-45 (1939); Shaw v. Scott, 217 Iowa 1259, 1265-74, 252 N.W. 237, 243 (1934); Anderson v. Blakesley, 155 Iowa 430, 434-36, 136 N.W. 210, 212 (1912). Using such doctrines, the courts seek to enforce the existing contract that has been fully performed on the child's side. See Painter, 246 Iowa at 310, 67 N.W. at 618 (quoting Shaw, 217 Iowa at 1272, 252 N.W. at 243); Caulfield v. Noonan, 229 Iowa 955, 961, 295 N.W. 466, 469-70 (1940); Chehak v. Battles, 133 Iowa 107, 119, 110 N.W. 330, 334-35 (1907). The generally held view, however, is that the estoppel runs only to the adoptive parents and their privies. Scheaffer v. Scheaffer, 228 Iowa 779, 784, 292 N.W. 789, 791 (1940); see Kuchenig v. California Co., 410 F.2d 222, 227 (5th Cir. 1969); Menees v. Cowgill, 359 Mo. 697, 707-08, 223 S.W.2d 412, 418 (1949); Asbeck v. Asbeck, 362 S.W.2d 891, 893 (Tex. Civ. App. 1962); Note, Equitable Adoption: They Took Him Into Their Home and Called Him Fred, 58 Va. L. Rev. 727, 739-40 (1972). Privy as used here means the legal relationship between parties incident to succession by one party to an estate of interest formerly held by the other party. Asbeck, 362 S.W.2d at 893.

The limitation on estopped parties is based on the theory an equitable adoption or adoption by estoppel amounts to specific performance of the contract to adopt and, therefore, binds only the parties to the contract. See Kuchenig, 410 F.2d at 227. Moreover, since equitable adoption is an equitable remedy, the general principles of fairness and common sense govern its application and prevent it from running against non-involved parties. See Caulfield, 229 Iowa at 963-64, 295 N.W. at 471. Here holding the estate estopped from challenging Donald's adoptive status would be unfair and contrary to the realities of this situation. While Eva may have known Donald was not Rose's natural son, there is no conclusive evidence Eva knew he was not legally adopted.

If she did not know he was not legally adopted, her treatment of Donald as if he were Rose's natural son can hardly be held against her as it most likely arose out of love for her half sister and a desire to make her happy. Even if she knew Donald was not legally adopted, we do not think her actions can be construed as playing a primary part in leading Donald to believe he was Rose's natural son. There also is no evidence George Fiala was in privity with Rose or Amos.

We hold the decedent's estate and heirs are not estopped to contest Donald's alleged status as the adopted son of Rose Robb. There also being no evidence Rose ever formally and legally adopted Donald, we hold the trial court correctly overruled his objection to the final report and affirm the trial court's judgment.

AFFIRMED.