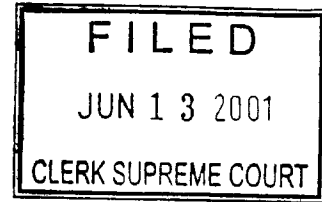


IN THE COURT OF APPEALS OF IOWA

No. 1-243 / 99-2052
Filed June 13, 2001



IN THE MATTER OF THE ESTATE OF CHARLES R. MILLER, Deceased,

BARBARA BROWN, Executor,
Appellant,

vs.

LARRY MILLER, MICHAEL MILLER, BETTY STILES, and PAMELA K.
WYATT,
Appellees.

Appeal from the Iowa District Court for Monroe County, Daniel P. Wilson,
Judge.

The executor of the Charles Miller estate appeals a district court order that
concluded she had taken property from the estate and owed the estate interest
on those assets. **AFFIRMED AS MODIFIED.**

John A. Pabst of Pabst Law Firm, Albia, until withdrawal, and then
Barbara Brown, Albia, pro se, for appellant.

Robert M. Box of Box & Box, Ottumwa, for appellees.

Considered by Sackett, C.J., and Vogel and Zimmer, JJ.

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VOGEL, J.

Barbara Brown, the executor of the Charles Miller estate, appeals a district court order concerning her interim reports and a special master's report, as well as objections to the same. She argues that the court erroneously concluded interest was owed to the estate on certain property she purchased at auction but for which she extensively delayed payment, and alternatively, if interest was owed, that the court erroneously calculated the amount due. We affirm the district court finding that Brown was required to reimburse the estate for accrued interest, but modify the amount of interest awarded.

Background Facts and Proceedings. Charles Miller died on May 6, 1996, and his will was admitted to probate on May 23, 1996. Barbara Brown, one of Miller's daughters, was appointed executor. Brown and her four siblings – Robert Larry Miller, Michael Miller, Betty Stiles, and Pamela K. Wyatt – were all beneficiaries under Miller's will. The estate held auctions on August 31, 1996, and September 14, 1996. Brown and her husband took possession of \$2,038.50 worth of property at the August 31 auction and property worth another \$15,365.00 at the September 14 auction. Brown did not pay for the items at those times, but planned to delay her reimbursement until distribution was made from the estate.

The majority of the amount owed from the September auction was attributable to Brown's \$12,900 bid for Miller's car. It is unclear when Brown took physical possession of the vehicle, as at least one of the beneficiaries claimed Brown had been driving the car since Miller's death. However, it appears that the

date of possession can be fairly ascribed to the date of the last auction, as Brown admitted she personally paid for the licensing and insurance on the vehicle beginning in late 1996.

A special master was appointed in 1998 to make a report primarily regarding the income and expenses of Brown in her capacity as the executor. The report revealed no formal loans from the estate, but did specify that as of May 22, 1998, Brown owed the estate \$17,404 in "receivables." After a July 1998 disbursement to the beneficiaries, Brown paid a total of \$17,403.50 back into the estate: \$17,000 on July 9, 1998, and \$403.50 on July 17, 1998.

Scope of Review. We conduct a de novo review of the district court's judgment. Iowa Code § 633.33 (1999); Iowa R. App. P. 4. See also *Estate of Randeris v. Randeris*, 523 N.W.2d 600, 604 (Iowa Ct. App. 1994). Although not bound by the district court's findings, we do give them weight, particularly those involving witness credibility. *Randeris*, 523 N.W.2d at 604.

Interest Due on the Property. The record clearly demonstrates that Brown took possession of estate assets in August and September of 1996 and did not make payment for those items until July of 1998. As with any other purchaser at the auctions, by bidding on and assuming control over the property, without making payment, Brown incurred a debt to the estate. Once assets leave the estate, a reasonable rate of return can be assigned to those assets or "receivables." The district court found seven and one-half percent to be a reasonable rate of return for the distributed property, and we concur in that assessment.

However, rather than the \$20,000.00 estimated by the district court, the record establishes the value of the property taken, and the attendant debt owed, was only \$17,403.50. Moreover, rather than assessing two years of interest on the entire sum, the interest should have been calculated from the date on which Brown took receipt of the individual items to the date of her reimbursement to the estate. The record demonstrates that, at a minimum, formal possession of all items occurred no later than the auction dates.

The \$2,038.50 that should have been paid into the estate as of August 31, 1996, and \$14,961.50 of the total that should have been paid into the estate on September 14, 1996, were paid to the estate as of July 9, 1998. Brown therefore owed \$283.57 for 677 days of interest on the \$2,038.50 debt, and \$2,038.25 for 663 days of interest on the first \$14,961.50 due from the September auction. As the remaining \$403.50 due from the September auction was not paid into the estate until July 17, 1998, Brown owed \$55.63 for 671 days of interest on that amount. Accordingly, the total interest owed by Brown was \$2,377.45, rather than \$3,000.00, as determined by the district court. We therefore modify the district court's ruling to assess only \$2,377.45 in interest due on the \$17,403.50 debt owed by Brown to the estate. The remainder of the court's ruling is affirmed. Costs on appeal are assessed one-half to appellant and one-half to appellees.

AFFIRMED AS MODIFIED.