IN THE COURT OF APPEALS OF IOWA

No. 0-779 / 99-1742
Filed April 27, 2001

FILED
APR 27 2001
CLERK SUPREME COURT

IN THE MATTER OF THE ESTATE OF MILDRED A. SCHMIDT, Deceased,

ESTATE OF MILDRED A. SCHMIDT, Deceased,
Appellant.

Appeal from the Iowa District Court for Woodbury County, John A. Ackerman, Judge.

The administrator of Mildred Schmidt's estate appeals a district court's ruling on Karen Mayer's challenge to his final report, ruling that the proceeds from the sale of decedent's car and trailer should be included in the estate. The administrator argues that: (1) the supreme court has jurisdiction of this appeal since his appeal was timely; (2), the district court should have found that valid title was conveyed to the decedent even if she forged her mother's name, since as sole heir Mayer automatically obtained title upon her mother's death, (3) assuming Mayer forged her mother's name to the assignment of title, she should be estopped from making a claim to the proceeds of the mobile home; (4) the district court erred in ruling it was not Florence Faust's intent to convey the mobile home to the decedent; (5) in the alternative, the district court should have concluded there was insufficient evidence of forgery; and (6) the district court erred in valuing the vehicle at $7000. **APPEAL DISMISSED.**

David L. Reinschmidt and Jay E. Denne of Munger, Reinschmidt & Denne, Sioux City, for appellant.

Karen Mayer, Omaha, Nebraska, pro se appellee.

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

SACKETT, C.J.

This is an appeal by the estate of Mildred A. Schmidt challenging certain orders made by the district court. We find ourselves without jurisdiction to decide the issues raised in the estate's brief and dismiss the appeal.

Mildred Schmidt died intestate a resident of Woodbury County, Iowa, on May 9, 1997. Mildred's heirs at law were siblings and nieces and a nephew. After Mildred's death there was an attempt to reach a family settlement agreement that would enable Mildred's bills and funeral expenses be paid and her remaining assets to be distributed without a formal probate. When an agreement could not be reached, Mildred's brother Loren Davenport petitioned for and was appointed administrator of her estate. He filed an inventory listing her total estate at $22,885. Included in this total was a 1975 Geer mobile home inventoried at $13,000, a 1992 Buick Century inventoried at $4000, and a snow thrower inventoried at $10, together with other miscellaneous property.

As administrator, Davenport subsequently filed a final report and application for discharge presenting an itemized accounting of money coming in to his hands and a proposed distribution of $2,496.69 that he as administrator contended would be remaining after the payment of requested fees and charges. Notice of the hearing was mailed to those heirs for whom the administrator had addresses.

One of those heirs was Karen E. Mayer, the only child of Mildred's deceased sister, Florence Faust. Karen filed a lengthy objection to the final report, contending that certain items of the decedent's property had not been

accounted for and that the mobile home listed in Mildred's estate should be hers. She advanced that the home had belonged to her mother and that several years prior to her mother's death her mother and Mildred had moved in together. At that time Mildred sold the mobile home she owned and the two women occupied a mobile home then titled in Karen's mother's name. Karen claimed her mother requested that she allow Mildred to live in the mobile home after her death and agreed that the home would be returned to Karen upon Mildred's death. Karen further stated that the day after her mother's death she forged her mother's name on the certificate of title to the home and transferred it to Mildred. The crux of Karen's very lengthy filing was that the mobile home should come back to her.

The mobile home sat on rented land. The certificate of title to the home showed Mildred A. Schmidt to be the owner at the time of her death. A hearing on the administrator's application was held and the court found the interested parties had not been notified of the opening of the estate. The administrator was ordered to serve the proper notices and the hearing was again set for July 23, 1999.

In an opinion filed August 23, 1999, the district court denied the administrator's final report and application for discharge. The court found the transfer of the mobile home to Mildred was executed through Karen's forging Florence's signature on the deed. The deed[1] was deemed void. The court further found that although Karen may have had unclean hands because she committed the forgery, there was no evidence demonstrating injury to Mildred as

[1] Actually the mobile home was transferred not by deed but by transferring a certificate of title to the mobile home.

a result of the forgery. The court further found Mildred was present at the time of the forgery and had full knowledge of Karen's action. The court found it equitable to award the proceeds of the sale of the mobile home to Florence's heirs while ordering a deed to be executed transferring the mobile home to a purchaser. The money from the sale was to be paid to the court to be held for distribution to Florence's heirs. In this order, the court gave no direction as to who was to pay the $13,000 to the court. The court further ordered that the administrator should provide documentation of the value of a 1992 Buick and a snow blower of the decedent's which the administrator had sold to himself, and to amend his final report accordingly.

On September 8, 1999, the administrator filed a brief in support of his request that the court include the mobile home proceeds in the estate. On October 5, 1999, the court overruled the request to include the mobile home in the estate and ordered the administrator pay an additional $3000 for the Buick he purchased and $200 if he wished to keep the snow blower.

On October 28, 1999, the court filed what it called a "Probate Order and Ruling." The court stated that Karen Mayer had requested the court to determine a deadline upon which the August 23 and October 5 money judgments would be due. The court noted the personal representative had sufficient time to comply with its orders. The court then ordered Davenport to pay $13,000 into the court and $3,200 to the estate. The court noted the time for filing a notice of appeal appeared to expire on November 4, 1999. The court ordered that if appeal was filed, Davenport would be required to file a bond in the amount of $16,200. The

court then entered judgment against Davenport and in favor of the estate in the amount of $3,200 and against Davenport and in favor of the heirs of Florence Faust in the amount of $13,000 plus interest at the legal rate from September 23, 1999. This is the first time that the court ordered that the $13,000 be paid by Davenport to Mayer.

On November 1, 1999, a notice of appeal was filed in the office of the Clerk of the Supreme Court by attorneys for the estate. It was signed by the attorneys for the estate. The notice was addressed to no one and indicated that the estate appealed from the decisions dated August 23, 1999, and October 5, 1999, and from other rulings adverse to the estate. There is no record showing this notice was filed with the Woodbury County District Court.

On November 18, 1999, the estate filed a notice of appeal with the Woodbury County Clerk. This notice advised the court that the estate was appealing the final judgment of the court on October 28, 1999, the decisions of the court dated August 23, 1999, and October 5, 1999, and from all other rulings adverse to the estate.

In its brief the estate contends (1) the court should have found decedent had title to the mobile home; (2) that Karen Mayer is estopped from making a claim against the proceeds of the mobile home; (3) that the district court erred in finding it was not Florence Faust's intention to covey the mobile home to Mildred; (4) that the court should have found insufficient evidence of forgery; and (5) that the district court erred in valuing the Buick at $7000.

The first question we need to address is whether the appeal is timely. Karen Mayer, who has appeared pro se throughout these proceedings,

challenged the appeal, contending that it was of a late filing date and did not follow correct procedures.

A single Supreme Court Justice entered an order directing that the parties file statements regarding whether the court had jurisdiction to consider the informational notice of appeal filed by defendant. The estate filed a statement contending that the appeal was timely because notice was filed within thirty days of the October 28, 1999, order. The estate has also addressed the issue of jurisdiction in its brief. No other heirs or parties have filed briefs. In its brief the estate advances that the final judgment in the matter was the October 28, 1999, judgment and that consequently the November 18, 1999, notice of appeal, filed with the Woodbury County Clerk of Court, conferred jurisdiction on the Supreme Court.

The notice of appeal filed with the Clerk of the Supreme Court on November 1, 1999, did not confer jurisdiction on the Supreme Court. Iowa Rule of Appellate Procedure 6 provides in part that an appeal "is taken and perfected by filing a notice with the clerk of the court where the order, judgment or decree was entered, signed by appellant or his attorney." There is no record that this notice was ever filed in the Woodbury County District Court, so this notice did not confer jurisdiction on the Iowa Supreme Court. Having so decided we need not address other alleged defects in this notice of appeal.

The November 18, 1999, notice of appeal appears to meet the required prerequisites to confer jurisdiction to entertain an appeal. However, our inquiry

does not end there. Rather we must address whether the issues now raised on appeal were finally decided in the October 28, 1999, order and judgment or whether they were decided in the earlier rulings.

The question is whether the August 23, 1999, and the October 5, 1999, orders were final orders addressing issues on appeal. That is, we must decide whether they were interlocutory rulings or final decisions. An interlocutory ruling or decision is not appealable without permission. *In re Marriage of Mantz*, 266 N.W.2d 758 (Iowa 1978). Final judgments and decisions are appealable as a matter of right, but appeal must be taken within thirty days from the entry of the order, judgment or decree involved. See Iowa R. App. P. 5(a). We lack jurisdiction to hear unauthorized appeals. *Mantz,* 266 N.W. 2d at 759.

Probate orders entered after notice and hearing are final as to parties having notice or appearing without notice. See *Matter of Myers Estate*, 269 N.W.2d 127, 128 (Iowa 1978). Iowa Code section 633.36 provides that "[a]ll 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." *Matter of Estate of DeTar*, 572 N.W.2d 178, 182 (Iowa Ct. App. 1997); *see also In re Estate of Myers*, 269 N.W.2d 127, 128 (Iowa 1978); *In re Estate of Jarvis*, 185 N.W.2d 753, 756 (Iowa 1971).

The August 23, 1999, filing the district court captioned "Ruling on Objections to Final Report" addressed two issues raised on appeal, namely (1) entitlement to the proceeds of the mobile home and (2) whether the administrator paid the estate full market value for the Buick and the snow blower. The order

was entered following a notice and a hearing. The order provided that $13,000 for the mobile home should be paid into the court, but it made no finding as to who should pay the money. The order addressed the issue of the value of the Buick and the snow blower but ordered appraisals before making a finding as to their value. Because there was no final resolution of either issue, we determine the August 23, 1999, order was an interlocutory order.

We next address the October 5, 1999, ruling in which the court specifically held that the estate's request to include the mobile home in the estate was overruled. This overruling of the estate's request was therefore a final order as to this issue. In order to confer jurisdiction on the Sureme Court, any notice of appeal would need to be filed within thirty days of this ruling. We have decided that the notice of appeal filed with the Clerk of the Supreme Court on November 1, 1999, did not confer jurisdiction. Consequently we have no jurisdiction to hear the issues inherent in this claim, namely that (1) the court should have found the decedent had title to the mobile home; (2) Karen Mayer is estopped from making a claim against the proceeds of the mobile home; (3) the district court erred in finding it was not Florence Faust's intention to covey the mobile home to Mildred; and (4) the court should have found insufficient evidence of forgery. The court also ordered in the October 5, 1999, order that Davenport pay $3200 for the Buick and snow blower. Consequently, the order was final as to that issue, and for the reasons stated above, this court does not have jurisdiction to hear these issues on appeal.

The October 28, 1999, order for the first time orders judgment in favor of Karen Mayer and against Davenport in the sum of $13,000 plus interest at the

legal rate. Davenport has not appealed. The only appellant is Mildred's estate. Because Davenport is not a party to the appeal and does not challenge the finding that judgment should enter in favor of Mayer and against himself, there is nothing for us to decide. The appeal is dismissed.

APPEAL DISMISSED.