FILED
JAN 26 1982
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN THE MATTER OF THE ESTATE OF HATTIE SCHIELD, DECEASED.

INEZ SCHIELD,

Plaintiff-Appellee,

vs.

MELDA IRENE SCHIELD:
LAWRENCE SCHIELD,

Defendants-Appellants,

FARMERS STATE BANK,

Executor.

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Filed January 26, 1982

1-444
2-66628

Appeal from Grundy District Court - Peter Van Metre, Judge.

The defendants appeal from the trial court's order denying their application for final distribution of assets of an estate. AFFIRMED.

Alfredo G. Parrish, Des Moines, Iowa, for defendant-appellant Melda Irene Schield.

James D. Robertson, Marshalltown, Iowa, for defendant-appellant Lawrence Schield.

John W. Pieters, Waterloo, Iowa, for plaintiff-appellee Inez Schield.

T. J. Heronimus, Grundy Center, Iowa, attorney for executor.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

The defendants appeal from the trial court's order denying their application for final distribution of the assets of an estate.

On November 19, 1972, Hattie Schield died. On February 24, 1977, her will was admitted into probate. Plaintiff Inez Schield and defendants Melda and Lawrence Schield were beneficiaries under Hattie's will. Inez had filed a petition for declaratory judgment requesting the court to determine the rights to purchase certain real property in the estate. The court entered a ruling adverse to Inez on the matter.

On October 22, 1979, Lawrence filed an application to complete sale and to distribute funds of the estate on the basis of the ruling. On January 11, 1980, Inez resisted the application, asserting that she had a personal injury action against the estate and the executor personally and that this action constituted a lien upon the assets of the estate. On January 31, 1980, the trial court ordered completion of the sale of the real estate to Lawrence and deferred ruling on the distribution of the estate assets. Inez appealed and the trial court ruling was affirmed by this court. In re Estate of Schield, 300 N.W.2d 302 (Iowa 1981).

On February 13, 1981, Lawrence filed an amendment to his application to complete the sale of real estate and to distribute funds, stating that there was no valid reason for the estate to continue the holding of estate assets pending a determination of the lawsuit by Inez Schield against the executor in his individual capacity and as executor. Lawrence requested that the assets be distributed according to the provision of the will. On February 18, 1981, Inez filed an objection to distribution of assets claiming that the Iowa Supreme Court had not decided if an estate may be liable for negligent acts of an executor and that no distribution of assets could occur until her lawsuit was resolved. The trial court, after hearing, denied the application to distribute assets.

Appellants' sole contention on appeal is that, as a matter of law, the liability, if any, of the executor on the personal injury action is personal and therefore no recovery lies against the estate or assets of the estate. We do not reach the merits of this legal issue. We view the trial court's order as a conclusion that this issue is more properly to be determined in the personal injury litigation--an opinion which we share. Not only is the matter of potential liability of estate assets involved, but also questions of court costs and attorney fees in defending the claim against estate assets. While all of these questions bear on the distribution of estate assets, we believe that it is much more appropriate that they be determined in the personal injury litigation. The order of the trial court is affirmed.

AFFIRMED.