

FILED

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IOWA
CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF

GRINNELL MUTUAL REINSURANCE
COMPANY,

Plaintiff,

vs.

THE DISTRICT COURT OF WOODBURY
COUNTY, IOWA, JAMES P. KELLEY,
CHIEF JUDGE,

Defendant.

Filed February 5, 1980

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2-62997, 98 & 99

On certiorari from Woodbury District court - James P. Kelley, Judge.

These consolidated original certiorari actions challenge district court orders refusing to reopen three estates subsequent to the time of the orders approving final report and discharging the personal representative. WRIT SUSTAINED.

Alan E. Fredregill of Gleysteen, Harper, Eidsmoe & Heidman, Sioux City, for plaintiff.

Thomas R. Mohrhauser of McGrane & Mohrhauser, Mapleton, for defendant.

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

PER CURIAM

These consolidated original certiorari actions challenge district court orders refusing to reopen three estates subsequent to the time of the orders approving final report and discharging the personal representative. The orders discharging the fiduciary were entered in each estate on August 14, 1978. The petitions for reopening were filed on November 14, 1978, in each estate, and were denied on December 20, 1978.

The plaintiff here (petitioner in the district court) is an insurance company which seeks to make claim against the personal representative in each estate based upon transactions occurring during the course of administration. The defendant here is the district judge who denied the petitions to reopen.

I. Prior to reaching the merits of the legal issues presented, we feel compelled to consider a jurisdictional matter. It is undisputed that the sole purpose of the motion to reopen is to permit the assertion of a claim in each estate in the amount of \$2,333.33. Were the matter here on appeal we would question the jurisdictional amount under Iowa R. App. P. 3. In the district court, the plaintiff implicitly conceded the lack of requisite jurisdictional amount by asking that court to certify that an appeal should be allowed from the orders refusing to reopen the three estates. The district court denied the application for such certification. Following this action by the district court, the supreme court granted plaintiff's petitions for certiorari.

The official comment to Iowa R. App. P. 3 provides: "The certificate is jurisdictional if the actual amount in controversy is below the limit. See however R. A. P. No. 304, treating it as certiorari if the grievance is one reviewable in that way." Although, in Crane v. Fulton, 270 N.W.2d 601, 603 (Iowa 1978), the court indicated that permitting certiorari proceedings in such circumstances tend to circumvent the requirement of Iowa R. App. P. 3, the decision does not appear to flatly preclude such procedure. In the present case, the record clearly revealed the district court's action in denying the certificate to appeal at the time certiorari was considered and granted by order of the supreme court. On this state of the record we must assume that the jurisdictional issue was resolved by that order. We will therefore consider the case on the merits.

II. Plaintiff's petition to reopen, in each estate, was based on sections 633.488, 633.489, The Code 1977. Our review of the record compels the conclusion that the petition should have been granted. Section 633.488 provides, in part:

Whenever a final report has been approved and a final accounting has been settled in the absence of any person adversely affected and without notice to him, the hearing on such report and accounting may be reopened at any time within five years from the entry of the order approving the same, upon the application of such person, and, upon a hearing, after such notice as the court may prescribe to be served upon the personal representative and the distributees, the court may require a new accounting, or a redistribution from the distributees.

It appears without dispute that the closing of each estate occurred without notice to the plaintiff.

Plaintiff's petitions allege that the personal representative had both oral and written notice of the basis of the claims it seeks to assert. The personal representative at no time denied such notice and defendant in this proceeding does not assert that the personal representative was without knowledge of plaintiff's claim. More significantly, plaintiff's claims are based, in principal part, on a written agreement executed by the personal representative, the terms of which were necessarily known to him. Unlike a claim against the decedent which survives his death, there is no statutory requirement for filing a claim arising during the course of administration. We reject defendant's claim that plaintiff was guilty of laches with respect to these claims.

Under these circumstances, we conclude that plaintiff is a "person adversely affected and without notice" under section 633.488. It also appears to be a "person interested" under section 633.478, The Code. See Moser v. Brown, 249 N.W.2d 612, 615 (Iowa 1977).

The apparent basis for the denial of the petition by the defendant judge was the view he expressed on the merits of plaintiff's claims. The district court concluded that the terms of the settlement agreement between the personal representative and a third party conclusively established that the third party was not "legally responsible" for the death of the personal representative's decedents. This led to the additional conclusion that plaintiff's claims were invalid because based on a contractual provision which provides:

"... the company shall be entitled to the extent of the above payment to the proceeds of any settlement or judgment that may result from the exercise of any rights of recovery which this estate may have against RICHARD E. IRISH, his heirs or assigns, or any other persons, firm or corporation legally responsible for the death of the above named decedent (emphasis supplied).

We have difficulty in concluding how the language of a settlement agreement with a third party, to which plaintiff was not privy, can preclude it from showing that the third party was in fact legally responsible for the death of the decedent. The district court also stated in support of its order:

THIS COURT FURTHER FINDS that the Release and Agreement entered into by petitioner and Fouts provided for subrogation only from proceeds of settlement with or judgment recovered against persons, firms or corporations legally responsible for the death of the decedent herein; that this Court has been provided with no evidence whatsoever as to persons, firms or corporations who or which have been determined to be legally responsible for the death of the decedent herein.

Such determination was, at best, premature. Plaintiff was not in a position to provide such evidence until the estates were reopened and formal issues could be joined in a proceeding against the personal representative.

We do not hold that plaintiff is ultimately entitled to prevail on these claims. Only that the showing made as to the basis for such claims was sufficient to require reopening of the three estates. The defendant judge abused his discretion and acted illegally in denying the petitions to reopen.

WRIT SUSTAINED.