IN THE COURT OF APPEALS OF IOWA

No. 9-311 / 98-286
Filed October 27, 1999

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CLERK SUPREME COURT

IN THE MATTER OF THE CONSERVATORSHIP OF MILTON T. LEONARD, Ward

CECILIA PALMER, Executor of the Estate of MILTON T. LEONARD, Deceased,
Appellant,

vs.

RICHARD LEONARD, Conservator,
Appellee.

Appeal from the Iowa District Court for Delaware County, K. D. Briner, Judge.

Milton Leonard's estate appeals a district court order, on remand from the supreme court, dismissing a petition for involuntary appointment of a conservator.

AFFIRMED.

Judith O'Donohoe of Elwood, O'Donohoe, O'Connor & Stochl, Charles City, for appellant.

William D. Werger of Hanson & Werger, Manchester, for appellee.

Heard by Streit, P.J., and Vogel and Zimmer, JJ.

STREIT, P.J.

A citizen resisted paying income taxes by placing his farm in trust. As he was about to lose his farm in a tax sale, a conservatorship was created and the farm was saved. Milton Leonard's estate still has the family farm despite the unlawful appointment of an involuntary conservator during Leonard's lifetime. The estate now claims those parties who facilitated the redeeming of the farm should not be paid for their services. Because Leonard received an identifiable benefit, was completely competent, and did not challenge the appropriateness of the conservator's actions until the farm was safely redeemed, the district court appropriately approved all fees and correctly assigned Leonard personal responsibility for the loan used to redeem his property. Additionally, the district court's order nunc pro tunc involved collateral matters. Therefore, the court retained jurisdiction as to the order. The district court is affirmed.

I. Background Facts & Proceedings.

Milton Leonard and the Internal Revenue Service (IRS) had an ongoing disagreement over Leonard's creation of a spurious trust to avoid taxes and his failure to pay income taxes for the years 1990-1996. Following numerous audits, the IRS issued a tax levy against Leonard in the amount of $98,967.44 and notified him that his farm would be sold to satisfy the tax obligations. The farm was ultimately sold under sealed bid, but Leonard retained the right of redemption if he paid all outstanding balances and penalties within 180 days of the sale.

Jerald Leonard, Milton's son, sought the appointment of an involuntary conservator for Milton in an effort to redeem the farm. Jerald requested the court appoint him temporary conservator and give him permission to use the farm as collateral in securing a loan for its redemption. He then sought appointment as the permanent conservator in order to protect the property and pay taxes in accordance with IRS rules. At the hearing, Leonard agreed to the conservatorship but requested his other son, Richard, be appointed conservator. The court granted the involuntary conservatorship and appointed Richard conservator, anointing him with all powers necessary to obtain financing and redeem the farm property. Leonard appealed the order creating the conservatorship.

In order to redeem the property, Richard borrowed $87,802.04 from First State Bank of Manchester. The IRS informed Richard he properly redeemed the farm. All remaining loan proceeds were kept in an account and used to pay additional tax liabilities and fees.

In April 1997 the Iowa Supreme Court heard Leonard's appeal regarding the creation of the involuntary conservatorship. The supreme court ruled the conservatorship was improperly created. The court found a proposed ward cannot consent to an involuntary conservatorship, and there was no evidence to prove Leonard's decision-making abilities were impaired. *In re Conservatorship of Leonard*, 563 N.W.2d 193, 196 (Iowa 1997). The supreme court also ruled the erroneous order did not deprive the district court of authority to ratify the

conservator's actions or to approve payment of appropriate fees. *Id.* at 197. The supreme court limited its decision to reversing the order establishing the conservatorship and remanded the case with instructions to dismiss the petition. *Id.*

On remand, the district court entered an order dismissing the petition for involuntary appointment of a conservator. The district court additionally awarded numerous fees and expenses incurred by attorneys and the conservator for administering the conservatorship and redeeming the farm property. The court withheld approval of the conservator's final report until he liquidated the estate by securing from the IRS all excess proceeds from the bank loan. The conservator was also directed to pay all costs of administration and creditors. Finally, the court ruled Leonard was the legal successor to the right and obligations of the conservatorship and was therefore personally liable for the promissory note executed to First State Bank. Leonard appealed, arguing he received no benefit from the actions of the conservator and the numerous attorneys involved and should not be personally liable for their fees or the bank's promissory note. He also claimed the district court did not have jurisdiction to enter an order nunc pro tunc because he had already filed his notice of appeal prior to the entry of the order.

During the pendency of this appeal, Milton Leonard passed away. On October 6, 1999, the executor of Leonard's estate was substituted as the party of interest.

II. The District Court's Approval of Fees and Assignment of Personal Liability for the Promissory Note to Leonard.

A. Standard of Review. "[O]bjections to a fiduciary's final report is an equitable proceeding, thus our review is de novo." *In re Estate of Johnson*, 387 N.W.2d 329, 332 (Iowa 1986) (citations omitted). We give deference to the district court's findings of fact, but are not bound by them. Iowa R. App. P. 14(f)(7).

B. The District Court's Approval of Fees and Assignment of Personal Liability for the Promissory Note Was Proper. The supreme court, in invalidating the conservatorship, correctly posited the dilemma we now face,

> All of these people presumably provided services that ultimately resulted in saving Milton's property, and now Milton seeks to keep the fruits of those efforts without paying for them. Given the present state of the record, we must presume Milton was competent throughout the proceedings. Yet he stood by without objection and allowed all involved to take action on his behalf to protect his property. Evidently, as a competent adult, he considered these efforts valuable and entitled to remuneration because he lodged no objection until after the services were performed and paid and the property made secure.

In re Conservatorship of Leonard, 583 N.W.2d at 196. Milton Leonard, through the diligent efforts of all involved, rested peaceably on his redeemed farm. However, Leonard's estate now seeks to take another bite of the apple by claiming the services provided by the attorneys and the conservator were of no benefit. The supreme court's ruling denotes that the award of fees is equitable. *Id.* We agree with the supreme court's logic. Leonard received an identifiable benefit, was completely competent, and did not challenge the appropriateness of the conservator's actions until

the farm was safely redeemed. The district court's approval of fees and assignment of personal liability for the promissory note to Leonard was appropriate.

III. The District Court's Order Nunc Pro Tunc.

Normally, an appeal deprives the district court the ability to assert any further jurisdiction. *In re Estate of Tollefsrud*, 275 N.W.2d 412, 418 (Iowa 1979). This generalization is not without exceptions. "An appeal deprives the district court of jurisdiction only as to those issues on appeal." *Beyond the Garden Gate, Inc. v. Northstar Freeze-Dry Mfg., Inc*, 526 N.W.2d 305, 311 (Iowa 1995) (citation omitted). Thus, collateral matters may be addressed in an order nunc pro tunc. *In re Estate of Tollefsrud*, 275 N.W.2d at 418.

The district court's order nunc pro tunc addressed only collateral issues. The order was simple housekeeping designed to ensure the smooth dismissal of the conservatorship. The order had no bearing on the issues presently before this court.

IV. Conclusion.

Although the supreme court remanded this case for dismissal, the district court could not be expected to simply dismiss the case without any administrative efforts to equitably address the myriad of involved parties. The district court's approval of fees and assignment of responsibility for the promissory note was appropriate. The benefit bestowed upon Leonard is apparent—the estate still has possession of the farm despite Leonard's attempts to circumnavigate the tax laws of the federal government.

In the same vein, the court's order nunc pro tunc was administrative in nature and had no bearing on the appellate issues. The district court is affirmed.

AFFIRMED.