IN THE COURT OF APPEALS OF IOWA

FILED
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CLERK SUPREME COURT

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IN THE MATTER OF THE ESTATE OF ARLEEN R. GERK, Deceased.	)	
SHERYL J. GERK,	)	
Appellant,	)	
vs.	)	8-674 87-283
RONALD C. GERK and CHARLES J. GERK,	)	
Appellees.	)	

Appeal from the Iowa District Court for Cerro Gordo County (18914), Stephen P. Carroll, Judge.

Appellant appeals a district court action ratifying the family settlement agreement. **AFFIRMED.**

Sheryl J. Gerk, Mason City, pro se.

David L. Brown of Hansen, McClintock & Riley, Des Moines, for appellees.

Considered by Schlegel, P.J., and Sackett and Habhab, JJ.

PER CURIAM

Sheryl Gerk appeals a district court action ratifying the family settlement agreement signed by the parties, closing the estate and approving the executor's actions and discharging him from further duties subject to his filing a compliance report, and rejecting Sheryl's various motions and requests. We affirm.

On May 6, 1983, Arlene Gerk died, survived by her husband, Charles, and her two children, Ronald and Sheryl Gerk. Arlene's holographic will nominated Ronald, a Minnesota resident, executor. Sheryl filed suit seeking to set aside the will. The district court upheld the will and Sheryl appealed. Subsequent to this, the parties executed a Family Settlement Agreement seeking to resolve all pending disputes. The agreement was signed by Sheryl Gerk in the presence of her attorney. The agreement provided that Sheryl would receive the real estate located in Mason City, that Ronald would receive approximately $31,000 in cash in lieu of the real estate, and that Sheryl would dismiss her various appeals and objections with prejudice. In November 1985, the executor, Ronald Gerk, filed a report indicating that he had complied with the agreement and sought a discharge from his duties. Sheryl filed numerous objections to this report. The district court eventually resolved all issues in favor of the executor. Sheryl has now filed this appeal.

I. **Scope of Review.** Petitioner argues that this court must review this proceeding de novo. We disagree. This action was filed at law and no evidence exists that petitioner attempted to transfer this proceeding to a court sitting in equity, we deny petitioner's request for de novo review. The trial court's findings of fact are thus binding on this court if supported by substantial evidence. Iowa R. App. P. 14(f)(1); Matter of Estate of Herm, 284 N.W.2d 191, 200 (1979).

II. Gerk first contends that the district court erred by failing to remove Ronald Gerk, her brother, as executor of her mother's estate. She claims that her brother breached his fiduciary duties pursuant to Iowa Code section 633.63 and also, that he is disqualified under section 633.64.

The procedure for removing a fiduciary is set forth in Iowa Code section 633.65 (1987). Broad discretion is vested in the court in removing an executor. See Matter of Estate of Lovell, 344 N.W.2d 576, 578 (Iowa App. 1983), and the court will be reversed only upon a showing that the court abused that discretion. The measure of care and diligence which a fiduciary must bring to the management of an estate is that which an ordinary prudent man or woman

would exercise under like circumstances in his or her own affairs. Matter of Estate of Heller, 401 N.W.2d 602, 609 (Iowa App. 1986) (citation omitted).

We believe that substantial evidence supports the trial court's findings that Ronald Gerk adequately performed his fiduciary duties pursuant to section 633.63 and furthermore, that good cause exists for appointing him as a nonresident fiduciary alone without the appointment of a resident fiduciary.

III. Gerk also claims error in the trial court's failure to grant her motion for appraisal of the real estate property which is the subject of the Family Settlement Agreement. Iowa Code section 633.101 (1987) states that the court may, at any time, determine it to be in the best interests of the estate to order an appraisal of any or all of the property of an estate. The Family Settlement Agreement valued the home at $31,249. Gerk offered an appraisal report indicating that the price range of the home was between $25,000 to $40,000, with the "predominant value" set at $35,000. Upon our review of the record, we believe that the trial court's acceptance of the valuation contained in the Family Settlement Agreement is well within the permissible range of the evidence, and the court's decision declining to order an appraisal is supported by substantial evidence.

IV. Gerk next claims that the trial court incorrectly denied her notice of request to review all orders entered without notice or appearance. She relies on Iowa Code section 633.37 which states that all orders entered without notice or appearance are reviewable at any time prior to the order approving the final report. As the trial court noted, Gerk has failed to specify wherein any order is deficient or improper. Generalized assertions of error are ordinarily not sufficiently specific to preserve error. See State v. Horton, 231 N.W.2d 36, 38 (Iowa 1975). We thus find no merit to this claim.

V. Petitioner further claims that she was fraudulently induced into signing the Family Settlement Agreement because the real estate which she received under that agreement was subject to a lien which she was not aware of when she signed the agreement. We do not believe that the evidence supports her contention. The trial court found that:

> The evidence further shows that neither Mr. Duffy nor Mr. Nagle was aware of the lien for assessments at the time of the negotiation of the Family Settlement Agreement. Applying the law with respect to fraud, the Court concludes that there was not a knowing misrepresentation made to Sheryl Gerk. The Court further concludes that the lien for the special assessment was not material to the transaction and that Sheryl Gerk has suffered no damage owing to the fact the lien has been paid. For these reasons, there is insufficient evidence to support the proposition that a misrepresentation was committed and her argument falls of its own weight.

Evidence in the record supports these findings. The court also found the evidence insufficient to support Gerk's claims of duress and we find no reason to disturb this finding.

VI. Gerk also asserts that the trial court erred in overruling her motions for a new trial, for enlargement, discovery, and production of documents. Our review convinces us that the trial court's rulings are supported by substantial evidence and we affirm the trial court's rulings.

We affirm the trial court's disposition of this matter in toto.

AFFIRMED.