IN THE COURT OF APPEALS OF IOWA

No. 9-101 / 98-470
Filed August 27, 1999

IN THE MATTER OF THE ESTATE OF ROSE STONE, Deceased,

IRVING STONE, Executor,
Appellee,

vs.

NANCY BRADSHAW,
Appellant.

FILED
AUG 27 1999
CLERK SUPREME COURT

Appeal from the Iowa District Court for Polk County, Ruth B. Klotz, Associate Probate Judge.

Nancy Bradshaw appeals a probate court order dismissing her claim against her mother's estate and dismissing her Iowa Rule of Civil Procedure 252 motion for rehearing. **AFFIRMED IN PART AND DISMISSED IN PART.**

Nancy Bradshaw, San Diego, California, pro se, appellant.

Bruce Graves of Brown, Winick, Graves, Gross, Baskerville & Schoenebaum, P.L.C., Des Moines, for appellee.

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

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VOGEL, J.

Nancy Bradshaw appeals a probate court order dismissing her claim against her mother's estate and a second order denying her Iowa Rule of Civil Procedure 252 motion for rehearing. We find we are without jurisdiction to review the first order because Bradshaw's appeal was untimely. We affirm the denial of her motion for rehearing.

Background facts. Rose Stone died on February 21, 1997. Her will was admitted to probate in March of 1997, and her son, Irving Stone, Jr., was appointed executor. Notices were mailed and published pursuant to Iowa Code section 633.410. On July 23, 1997, Nancy Stone Bradshaw, daughter of the decedent and sister of the executor, filed a document entitled "Creditor's Claim of Nancy Joy Stone Bradshaw for $2,000,000." Bradshaw's claim was based upon her mother's alleged breach of fiduciary duty and breach of a 1968 contract for the purchase of closely-held stock in a family business.

Before the executor could respond to the claim, Bradshaw requested a hearing on her claim.[1] The executor subsequently filed a motion to dismiss Bradshaw's claim asserting that: 1) the claim was barred by the statute of limitations, 2) the decedent owed no fiduciary duty to Bradshaw, and 3) Bradshaw failed to state a claim upon which relief could be granted. A hearing on the motion was set with proper notice

[1] We note that Bradshaw filed her request for hearing prior to her claim being admitted in writing by the executor. Pursuant to Iowa Code §633.438 (1997), her claim would be considered as denied without any pleading on behalf of the executor.

mailed. The court granted the motion to dismiss Bradshaw's claim on November 10, 1997. No appeal was taken. On December 26, 1997, Bradshaw filed a "Motion for Rehearing pursuant to Rules 252(b), 86 and 88." The court denied the motion on February 2, 1998. On February 29, 1998, Bradshaw filed a notice of appeal.

I. Jurisdiction. As an initial matter, we find that we do not have jurisdiction to review the court's order of November 10, 1997. The order was a final judgment which clearly should have been appealed from within thirty days from the date of filing. *See* Iowa Code § 633.36 (1997) ("All orders and decrees of the court in probate are final decrees as to the parties having notice and those who have appeared without notice."); Iowa R. App. P. 1(a), 5(a). Bradshaw's filing of a motion for rehearing neither tolled nor extended the time period for appeal. *Cf. In re Young's Estate*, 273 N.W.2d 388, 391 (Iowa 1978) (indicating that a successful rule 252 motion would recommence the time period for appeal). Furthermore, her motion was filed after the thirty-day time period had expired. For these reasons, that portion of Bradshaw's appeal relating to the court's November 10, 1997 order should be dismissed. However, Bradshaw's appeal of the February 2, 1998 order was timely, and we will therefore address the issues raised therein.

II. Motion for rehearing. Bradshaw argues that the district court erred in denying her motion for rehearing. In her motion Bradshaw claimed that the court's

November 10, 1997 order contained eight separate errors or "irregularities" under Iowa Rule of Civil Procedure 252(b) which required the order to be set aside.[2]

Iowa Rule of Civil Procedure 252(b) allows a court to correct, vacate or modify a final judgment or order, or grant a new trial if there was irregularity or fraud practiced in obtaining the order. Trial courts are granted wide discretion in deciding whether to vacate a judgment under rule 252 and will not be reversed in the absence of an abuse of discretion. *In re Marriage of Marconi*, 584 N.W.2d 331, 334 (Iowa 1998); *In re Adoption of B.J.H.*, 564 N.W.2d 387, 391 (Iowa 1997). This deference, however, does not extend to legal conclusions; concerning them our review is on error. *See Marconi*, 584 N.W.2d at 334; *Falczynski v. Amoco Oil Co.*, 533 N.W.2d 226, 230 (Iowa 1995).

The district court carefully examined all of Bradshaw's claims within the parameters of Rule 252(b). Each claim of "irregularity" was disposed of on either procedural or substantive grounds. After reviewing the court's extensive order, we find no legal error nor abuse of discretion. We therefore affirm the court's order denying Bradshaw's motion for rehearing.

AFFIRMED IN PART AND DISMISSED IN PART.

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[2] In her motion, Bradshaw claimed that the court erred in requiring her to file a claim which conformed with the formal rules of pleading; erred in dismissing her claim *with prejudice*; erred in placing the burden of proof on herself; and erred in failing to grant her leave to amend her claim. Bradshaw further claimed that the clerk of court should have given her notice pursuant to I. R. Civ. P. 86, that the decedent and executor had fraudulently concealed her claim, and that the executor's allegations of fact were erroneous.