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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN THE MATTER OF THE ESTATE OF RALPH W. SHIVVERS, Deceased,

CHARLES C. SHIVVERS, ELNORA SHIVVERS DIMM, GERALD J. SHIVVERS, MARK A. SHIVVERS and OWEN W. SHIVVERS,

Claimants-Appellants/Cross-Appellees,

v.

ERNEST MUELLER and DOROTHY MUELLER, Executors of the Estate of Ralph W. Shivvers,

Respondents-Appellees/Cross-Appellants.

Filed April 26, 1983

2-520
2-68315

Appeal from Marion District Court, Robert O. Frederick, Judge.

Claimants appeal from a summary judgment for respondents in an action to recover property which was distributed as part of the estate of Ralph W. Shivvers. REVERSED AND REMANDED.

John S. Murray of Murray, Curtis & Finn, Ames, for claimants-appellants.

Carroll Johnson of Johnson, Jordan & Lane, Knoxville, for the respondents-appellees.

Considered en banc.

OXBERGER, C.J.

Claimants appeal from a summary judgment for respondents in an action to recover property which was distributed as part of the estate of Ralph W. Shivvers. We reverse and remand for a trial on the merits.

Claimants filed a claim against the estate of their uncle, alleging that he had acquired a portion of his estate property by defrauding claimants and their mother. This claim was filed more than six months after the expiration of the period for filing claims against the estate provided by Iowa Code section 633.410. The trial court denied respondents' motion to dismiss, however, ruling that the claim which was filed was not a "claim" as contemplated under the provisions of that section.

Respondents next moved for summary judgment on the ground that the estate no longer possessed the assets in question. The assets had all been distributed to the beneficiaries under the will without a court order. Respondents asserted that the distribution had been made in good faith, lawfully, and without knowledge that a claim would later be filed. The trial court granted respondents' motion and dismissed the claim.

On appeal, claimants contend that the trial court erred in granting summary judgment because a distribution made prior to the final settlement without a court order does not relieve the executor from responsibility for errors in that distribution. Respondents argue that there is no requirement that a court order be made prior to a general distribution, that the distribution was made in good faith and is valid, and that since the beneficiaries are the actual and record owners of the property at issue, this action should have been brought against them. Respondents have also filed a cross-appeal, contending that claimants' claim is insufficient in its allegations to state a cause of action upon which relief can be granted.

Respondents are correct in their assertion that the Iowa Probate Code (chapter 633 of the Iowa Code) does not require a court order for a general distribution prior to the final settlement. "While it may no doubt be the general practice to obtain an order of the court authorizing partial distributions prior to the final settlement proceeding, there is no statutory requirement necessitating this practice." S. Kurtz, Iowa Estates § 15.21, pg. 524 (198). Claimants contend, however, that an executor who makes a distribution prior to the final settlement, and without a court order, does so at his own risk. We agree.

While there is no Iowa precedent either for or against applying the aforementioned rule, it finds considerable support in the decisions of courts sitting in sister jurisdictions. The case of In re Carlin's Estate, 47 S.W.2d 213 (Mo. Cir. Ct. App. 1931), is particularly on point here. In that case, a claim was filed against the estate on the eve of the final settlement. The claimant alleged that he was the adopted son and sole heir of the decedent, who had died intestate. No record of any adoption existed, and the defendant -administratrix had already made partial distributions among the seven collateral heirs, without a court order. At trial, the court found that the claimant was the adopted son of the decedent and ordered the administratrix to distribute the estate property to claimant. The administratrix requested that she be given a credit in the final settlement for the assets which had already been distributed in good faith to the collateral heirs. Her request was denied, and she appealed. The appeals court ruled that because the administratrix made the partial distribution without a court order, she did so at her own peril. Id. at 215. The fact that the distribution was made in good faith and without knowledge that a claim might be filed did not protect her, and the true owner was entitled to maintain his claim against her. He was not held to whatever remedies he might have had against the distributees. Id. at 215.

> In making payments in anticipation of the decree of distribution, the administrator acts at his peril, and if... it turns out... that the payee is not entitled to receive any part of the residue, the administrator must look for reimbursement to the person to whom the payment has been made. (emphasis added).

In re Johnson's Estate, 5 N.W.2d 38, 42 (S.D. 1942).

We are persuaded that this is the proper rule to follow in Iowa: Voluntary distributions made by the executor without a court order or decree authorizing them are made at the executor's own peril, notwithstanding the fact that they might have been made in good faith. This rule is in accord with the established rule in Iowa that an executor's responsibility for the proper handling of estate property is extinguished when the court orders his discharge after the final settlement. Cf. Murphy v. Hahn, 208 Iowa 698, 707 (1929). More importantly, however, it assigns the risk of loss involved in the unauthorized distribution to the party responsible for that distribution—the executor.

In the present case, what will happen if the distributees no longer possess the assets in question? Assuming claimants' claim is decided in their favor, they will have a judgment for the value of the assets. But what if the distributees are judgment proof? If claimants are relegated to their remedies against the distributees then claimants will have to bear the burden of the loss. Under the rule we apply here, the executors will be held ultimately liable for whatever errors they may have made in their unauthorized distribution. They will bear the risk that the distributees may be judgment proof.

In their cross-appeal, respondents contend that the trial court erred in denying their motion to dismiss on the ground that claimant's claim is insufficient in its allegations to state a cause of action upon which relief can be granted. We do not agree.

A motion to dismiss may be sustained "only when it appears to a certainty the pleader has failed to state a claim upon which any relief may be granted under

[any] state of facts provable under the allegations." Curtis v. Board of Supervisors, 270 N.W.2d 447, 448 (Iowa 1978). All doubts are resolved in favor of the pleader, and against dismissal. Furthermore, claims in probate do not need to be very precise; they may be stated in very general and informal terms. See Chariton National Bank v. Whicher, 163 Iowa 571, 579 (1914)(quoted in Knight v. Anderson, 292 N.W.2d 411, 414).

In the present case, claimants alleged that certain property was improperly included in the estate of Ralph Shivvers, that the property belonged to them, and that that fact had been fraudulently concealed from them by decedent. If all of this could be proven, claimants would be entitled to relief. In addressing respondents' cross-appeal, therefore, we hold that the trial court did not err when it ruled that claimants stated a sufficient claim to defeat a motion to dismiss. It did err, however, when it granted respondents' motion for summary judgment.

REVERSED AND REMANDED.