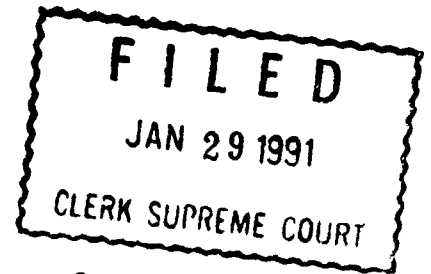


IN THE COURT OF APPEALS OF IOWA

No. 0-454 / 89-1874



JARON L. SWEET, as Administrator of the Estate of GREGORY
SCOTT SWEET,

Appellee,

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vs.

ALLSTATE INSURANCE COMPANY,

Appellant.

Appeal from the Iowa District Court for Buchanan
County, Roger F. Peterson, Judge.

Allstate appeals the district court's interlocutory
ruling that a decedent's parents did not release the
estate's wrongful death claim when they signed a release
with their insurer for underinsurance coverage. **REVERSED
AND REMANDED.**

George Lindeman and John A. Stitely of Lindeman &
Yagla, Waterloo, for appellant.

C. A. Frerichs of Fulton, Frerichs, Martin & Andres,
P.C., Waterloo, for appellee.

Considered by Donielson, P.J., and Hayden and Habhab,
JJ.

DONIELSON, P.J.

Gregory Sweet, adult son of Ruth and Jaron Sweet, was killed in a motor vehicle accident on June 17, 1988. The Sweet estate contends the automobile was being operated by Larry Wade Wessels, who also was killed in the accident. At the time of the accident Jaron had an insurance policy with Allstate Insurance Company (Allstate) which provided underinsurance coverage.

Following their son's death, the Sweets began negotiating with the various insurance companies. The Sweets signed a release of their claims against Larry Wessels' insurer in exchange for \$20,000. They also made a claim against Allstate alleging Gregory was a passenger in an insured automobile and the driver was underinsured. On September 29, 1988, and in exchange for \$40,000, the Sweets signed a release of Allstate "from any and all liability and from any and all contractual obligations whatsoever under the coverage designated [by the policy issued to Jaron Sweet] and arising out of bodily injuries sustained by Gregory Scott Sweet due to an accident on or about the 17th day of June 1988."

On February 22, 1989, the Sweets opened an estate for their deceased son. The district court appointed Jaron Sweet as the administrator of his son's estate. The administrator filed the present action against Allstate claiming benefits under the the underinsurance motorist coverage provided in the insuring contract purchased by

Jaron Sweet. Allstate's Answer claimed the release signed by the Sweets released this action.

Allstate filed a motion for summary judgment and the estate administrator filed a motion to adjudicate law points. Following a hearing, the district court overruled Allstate's motion for summary judgment. With regard to the adjudication of law points, the district court concluded the release signed by Ruth and Jaron Sweet does not release the claim belonging to Gregory's estate.

Allstate filed an application for permission to appeal the district court's interlocutory ruling. The supreme court granted Allstate permission to appeal at this time and subsequently transferred the appeal to this court.

Our review is for correction of errors at law. Iowa R. App. P. 4.

Allstate contends the trial court erred in ruling the release signed by the Sweets was not effective against the claim made by Gregory's estate. Allstate relies on Christie v. Chicago, Rock Island & Pacific Railway Co., 104 Iowa 707, 74 N.W. 697 (1898), for its contention that a settlement entered into by the sole heirs of a decedent precludes the decedent's estate from further recovery from the settling party.

The Christie case involved an action by an estate administrator against a railway for the wrongful death of Lloyd P. Connor. The railway alleged the claim was precluded because the railway had made a settlement with

the decedent's father and mother, Connor's sole heirs at law. The trial court instructed the jury to return a verdict for the railway on the ground that the damages sued for had been fully satisfied. The administrator appealed, contending the heirs had no title or ownership of the claim against the defendant and, therefore the settlement could not bar the administrator's action.

The supreme court rejected the administrator's argument and affirmed the district court's judgment. The Christie court stated, "The sole question for determination is whether the settlement with the heirs precludes a recovery by the administrator; or, putting it in another way, is administration of the estate of an intestate a necessity in this state, or is it only a matter of legal convenience?" Id., 104 Iowa at 709, 74 N.W. at 697. The supreme court concluded:

If, in the case of an intestate estate, there are no debts, and the property is such as can be divided, and the heirs agree upon a division, we know of nothing, either in law or reason, to prevent them from settling the estate without the intervention of an administrator. In the case at bar, the only property of the estate was the claim against defendant railway. There were no creditors, and the money received from the railway was not subject to their claims, had there been any. The father and mother were sole heirs, and, as such, they received this money, and receipted in full for all demands of the estate against the company. To say that they cannot do this,--that there must be an administrator, whether they wish or not, through whose hands this money must pass to them,--is to establish a rule that we are not inclined to sanction. . . .

The administrator is a mere trustee for the creditors and the heirs. If he received the money from defendant, he could but do with it what has already been done. It would seem both useless and

expensive to re-open this matter, in which he has no interest, save as he represents the heirs, and with the present status of which the heirs are entirely satisfied.

Id., 104 Iowa at 710-11, 74 N.W. at 698.

Allstate points out Gregory's estate consists solely of this claim, there are no creditors, and Ruth and Jaron are the sole heirs. Allstate contends that, although the right to bring a wrongful death action belongs to the estate, the personal property in the damages belongs to the heirs. Therefore, a release executed by the Sweets (the persons having the exclusive right to the damages) precludes this action by the administrator.

The district court disagreed with Allstate's contention that Christie was controlling authority for the case at bar. First, it noted that in Christie the fairness of the settlement was not questioned. The district court wrote, "Of course, the plaintiff in this case is contending that the moneys given for the releases were not sufficient." Second, the district court noted, that, unlike the release in Christie, the release signed by the Sweets did not specifically refer to the estate. Third, the district court believed Christie had been implicitly overruled by In re Estate of Bagnola, 178 Iowa 757, 154 N.W. 461 (1915). The district court then ruled that the decedent's heirs could not affect the cause of action because that "action belong[ed] to the Estate of Gregory Scott Sweet pursuant to Section 633.336 of the Code."

We must first address the trial court's erroneous conclusion that Christie was overruled by Bagnola. Far from overruling Christie, the Bagnola court specifically cited to Christie as "somewhat in point". Bagnola, 178 Iowa at 766-67, 154 N.W. at 465. Both Bagnola and Christie subsequently are cited for the proposition, "The parents are the sole heirs, the real parties in interest, the estate--wherefore, the administrator who sues is purely a nominal party." McDonald v. Mutual Life Ins. Co., 178 Iowa 864, 865, 160 N.W. 289, 289 (1916). We find no reason to conclude Christie has been overruled.

The trial court relied upon Iowa Code section 633.336 (1989) in concluding the release in question does not affect the estate's claim against Allstate. Section 633.336 provides:

When a wrongful act produces death, damages recovered therefor shall be disposed of as personal property belonging to the estate of the deceased If the decedent leaves a spouse, child or parent, damages for wrongful death shall not be subject to debts and charges of the decedent's estate.

(Emphasis added.) Apparently the district court believed the emphasized language required a finding that the Sweets could not affect the estate's claim against Allstate.

The Christie court addressed a similar contention based on a statutory provision almost identical to section 633.336.

By section 2526, Code 1873, it is provided: "When a wrongful act produces death, the damages shall be disposed of as personal property, belonging to the estate of the deceased, except that if the

deceased leaves a husband, wife, child or parent, it shall not be liable for the payment of debts." Under our law the right to a distributive share of personalty in the estate of an intestate vests instanter in the heir upon the death of the owner, and not from the time of distribution made. Distribution gives to the distributee no new title, but only ascertains the property to which title attaches. . . . It has been held in this state that heirs cannot maintain an action upon notes due the estate during the period allotted for administration. The ground upon which this holding is based is, not that they have no title, but that the extent of their interest has not been determined. Creditors have a first right to such of the personal assets as are not exempt, and it is only through administration that their rights can properly be made known and determined.

Id., 104 Iowa at 709, 710, 74 N.W. at 697-98 (emphasis in original). In Christie, the supreme court did not find the statutory provision required administration of the decedent's estate. Rather, the Christie court concluded a settlement reached by the sole heirs of the decedent, where there were no creditors, could and did preclude the estate's subsequent claim against the released party.

The district court's ruling is directly at odds with the Christie holding and we do not find that the district court's purported distinctions between Christie and the case at bar support this different result. Whether the administrator contends the moneys given in exchange for the release are insufficient is irrelevant to the issue of whether the release precludes the administrator from recovery. There is no contention before us that the settlement reached was not fair or made in good faith. The Sweets were obviously satisfied with the amount they have received.

In Bagnola, the administrator of the decedent's estate challenged his removal. The widow of the decedent had entered into a settlement with the railroad but, because of his removal, the administrator had not approved the settlement. The supreme court recognized the removal was improper but refused to reverse. The court noted,

[I]f we reversed, and directed the administrator to disregard the settlement, and if, in some manner, he could and would then proceed and obtain a sum much greater than \$1,200, he would, in that event, only obtain additional money for the widow. When the administration came to be wound up, every dollar obtained would go to her. She has given an acquittance, and is satisfied with the amount she has received. In what way can we do that which would be, in effect, an attempt to compel her to take more money than she wants? The trouble with it all is that, in the circumstances here, the widow is the estate, and it does not concern [the removed administrator], and we cannot control that the owner of the estate has no desire to enlarge it.

Bagnola, 178 Iowa at 766, 154 N.W. at 464 (emphasis added). Similarly, in the circumstances here, Jaron and Ruth Sweet are the estate. They have given an acquittance and are satisfied with the amount they have received. It does not concern the administrator of Gregory's estate, nor can we control, that the owners of the estate have no desire to enlarge it. The administrator's contention (that the amounts received for the releases are insufficient) is of no consequence.

The district court also believed that because the release signed by the Sweets did not specifically refer to the estate of Gregory Scott Sweet, the holding of Christie

was not on point. We disagree. We note again, because there are no creditors and because Jaron and Ruth Sweet are the sole heirs of Gregory, the Sweets are the estate. The only possible obligation Allstate had to the Sweets was because they were Gregory's heirs. See Ruden v. Parker, 462 N.W.2d 674 (Iowa 1990) (Iowa R. Civ. P. 8 does not offend equal protection guarantees of United States or Iowa constitutions; parents of adult child cannot recover under claim for parental consortium). The Sweets reached a settlement with Allstate releasing Allstate "from any and all liability and from any and all contractual obligations whatsoever" under the underinsurance coverage of the insurance policy issued to Jaron Sweet. No further language was required to preclude Gregory's estate from bringing this action against Allstate.

We hold the release signed by Jaron and Ruth Sweet does release Allstate from all liability under the underinsurance coverage of the insurance policy issued to Jaron Sweet. We reverse the district court's interlocutory ruling and remand for entry of summary judgment in favor of Allstate.

REVERSED AND REMANDED.