

IN THE COURT OF APPEALS OF IOWA

No. 1999-83 (9-270) / 98-1209

Filed June 23, 1999

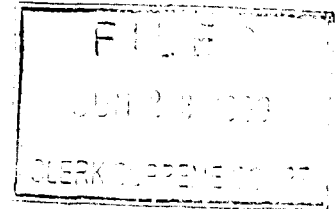
**IN THE MATTER OF THE TRUST UNDER THE
WILL OF JOHN FREIBURGER, Deceased,**

VINCENT FREIBURGER, Trustee,

vs.

EVA WEIGEL,

Appellant.



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

Eva Mae Weigel appeals the district court ruling accepting the final report of the trustee arising from a testamentary trust. **AFFIRMED.**

Larry J. Thorson of Ackley, Kopecky & Kingery, Cedar Rapids, for appellant.

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

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

ZIMMER, J.

Eva Mae Weigel appeals the district court order approving a trustee's annual report, final report, and application for attorney's fees associated with a testamentary trust. We affirm.

John Frieburger died in June 1971. Pursuant to his will, a trust was created to provide income for his son, Carl, and his daughter, Grace, for their natural lives. The will further provided that upon their deaths, the trustee was to convert the trust property into cash by collection and sale, pay all trust liquidation expenses, and distribute the remainder in equal shares to three of John's remaining children, Vincent, Earl, and Eva Mae.

In 1990, Eva Mae was appointed guardian for Grace and Earl was appointed as her conservator. That same year, First State Bank of Manchester was permitted to withdraw as trustee of the Frieburger trust and Vincent was appointed as trustee in its place. The bank had requested withdrawal in large part because of allegations of improper administration. These allegations, made by Eva Mae, were later determined by the district court to be unfounded.

Beginning in 1991, and every year thereafter, Vincent filed annual trust reports with the district court. Eva Mae approved of some annual reports while objecting to others, demanding accounting of the trust's financial activities and production of the trust's financial records.

In the spring of 1996, Vincent and Earl applied for medicaid benefits on Grace's behalf. Two payments were made before Grace died in August 1996.¹

On March 19, 1997, Vincent filed an annual report for 1996. In July 1997, pursuant to the terms of John's will, Vincent set out to sell the remaining trust assets and close out the trust. He obtained legal counsel to assist him in this process. Vincent's daughter and her husband offered to purchase a farm held by the trust for \$100,000. Vincent sought court approval, but following Eva Mae's intervention, the private sale offer was withdrawn. Instead, the land was placed in a publicly advertised auction. Pursuant to court order, the land was sold to the highest bidder Vincent's son — for approximately \$125,000.

Thereafter, Eva Mae resisted Vincent's petition to the court for approval of the sale. Following a hearing, the district court overruled Eva Mae objections, approved the sale, and authorized Vincent to complete the sale contract and pay all expenses. Eva Mae did not appeal this ruling.

On March 3, 1998, Vincent filed his final trust report and request for discharge as trustee as well as a request for payment of trustee's fees. Eva Mae did not file objections until Vincent had filed an amendment to the final report in May 1998. On June 1, 1998, the district court held a hearing on various issues including: approval of the 1996 annual report (for which no ruling had yet been entered); approval of the final report of the trustee; and fee applications made by Vincent and his attorney. The

¹Carl died in February 1975.

district court overruled objections made by Eva Mae at the hearing and approved all pending reports and applications. It also reiterated the court's prior approval of the 1995 annual trust report. Eva Mae subsequently filed a motion for a new trial, which was denied.

Eva Mae contends on appeal the district court erred in: (1) approving the final report of the trust because the trustee improperly refused to use the assets of the trust to pay for Grace's care; (2) approving the trustee's and the trustee's attorneys' fees associated with the sale of the trust farm; (3) limiting testimony and evidence only as to those items directly related to the 1996 annual report and the final trust report; and (4) approving the annual reports for 1995 and 1996 as well as the final report of the trustee.

I. Scope of Review. With certain exceptions, proceedings in probate court are in equity. See Iowa Code § 633.33 (1997). Since this action involves objections to a fiduciary's final report — a situation not falling within the exceptions of section 633.33 — it was tried in equity and our review is de novo. See Iowa R. App. P. 4; *In re Estate of Johnson*, 387 N.W.2d 329, 332 (Iowa 1986); *In re Anne Hamilton Killian Trust for Benefit of Hunter*, 519 N.W.2d 409, 411 (Iowa App. 1994). We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. See *Schildberg v. Schildberg*, 461 N.W.2d 186, 190 (Iowa 1990). We give weight to the fact findings of the district court, especially when considering the credibility of witnesses, but are not bound by them. See Iowa R. App. P. 14(f)(7).

To the extent challenges are raised to the district court's limitations on admissions of non-hearsay evidence, our review is for abuse of discretion. *See Duncan v. City of Cedar Rapids*, 560 N.W.2d 320, 324 (Iowa 1997).

II. Use of Trust Assets to Care for Trust Beneficiary. Eva Mae first contends Vincent, as trustee, improperly refused to use the assets of the trust to pay for the care of the lifetime beneficiary, Grace. She argues the trustee improperly obtained on Grace's behalf medicaid benefits from the State. She claims the trust's terms required its funds be used to pay for Grace's medical care and that use of medicaid resulted in a reduction in the quality of Grace's care. Eva Mae seeks to have the trustee held accountable to both the trust and to the State for using medicaid funds to care for Grace.

We determine her claim is without merit. In the spring of 1996, the liquid assets of the trust had been depleted and the only source of cash was the annual payment from the conservation reserve program (hereinafter "CRP") in which the real estate held by the trust had been placed. The CRP payment was received each year in October. In previous years, the trustee had always transferred money to Grace's conservator, Earl, who then paid the bills. When the trust ran out of cash in the spring of 1996, Earl proceeded, with Victor's assistance, to attempt to qualify Grace for Title 19 assistance.

According to the evidence presented, full information was given to the medicaid intake worker about the trust and the real estate. Despite the existence of the real estate, Grace qualified for medicaid benefits. As a result, the conservator

needed less money from the trust for Grace's care for a brief period before she died. Eva Mae apparently made no complaint to Earl or Vincent at the time Grace was placed in the Title 19 medicaid program.

We agree with the trustee's contention Eva Mae's discussion of Title 19 medicaid eligibility is meaningless without evidence of what she claims was misrepresented to the medicaid case worker. Vincent claims he fully disclosed all relevant facts regarding the trust to the case worker. Exhibits offered at trial support this contention.

Eva Mae had the opportunity at trial to call the medicaid case worker as a witness but did not do so. She presented no evidence the case worker inappropriately approved eligibility. She also had the opportunity to call Grace's conservator, Earl, as a witness but did not do so. Finally, no evidence was presented to the district court the State was disputing Grace's qualification for benefits or was attempting to recoup previously paid benefits. Simply put, Eva Mae has presented no evidence which allows us to evaluate her claim Grace was improperly approved for benefits under the medicaid program. The State is not a party to this action and remains free to pursue available legal remedies if it believes medicaid eligibility was obtained for Grace by fraud or misrepresentation.

III. Attorney and Trustee Fees. Eva Mae next claims the district court erred in approving payment of fees incurred by Vincent and his attorneys in attempting to sell the trust farm. She first contends no fees should be paid from the trust for their attempt to sell the property to Vincent's daughter at an allegedly discounted price.

She also contends no fees should be paid to them for the sale of the land at a public auction because the buyer was Vincent's son.

Eva Mae's claims lack merit. We agree with the district court's finding that Vincent did not act in bad faith in proposing a private sale of the land to his daughter. The record shows the land does not have strong market value and we find no reason to challenge Vincent's obvious belief that under such circumstances a court-approved private sale would be a financially sound decision. Furthermore, there is no dispute the public auction was conducted at arms-length and with proper notice. That the trustee's son happened to buy the land at a public auction is, under these facts, irrelevant. We determine the objections to Vincent's requests for compensation for efforts associated with the attempts to sell the farm were properly overruled. The requested amounts were reasonable and were properly approved by the district court.

IV. Limits on Scope of the Hearing. Eva Mae argues the district court improperly admitted evidence related only to the 1996 annual report and the trustee's final report. We disagree. Pre-trial filings did not raise the possibility the trustee would be required to defend past activities or accusations of fraud. Moreover, the issues to be resolved at the hearing were revisited and clarified at its commencement and no mention was made by Eva Mae of her intent to raise matters related to past trust activities. Finally, many of the matters Eva Mae sought to raise had already been resolved by her approval of previous annual trust reports and by prior court rulings.

It is a most a basic tenant of our legal system that once resolved, past matters should not be revisited. It is also a basic principle that courts generally should not hear evidence and consider issues not properly raised. *Cf. Henry Walker Park Ass'n v. Mathews*, 249 Iowa 1246, 1257, 91 N.W.2d 703, 710 (1958) (issue not fairly raised by the pleadings should not be considered by the court). We determine the district court did not abuse its discretion in limiting the scope of the hearing by rejecting evidence pertaining to past financial activities of the trust.

V. Approval of the 1995 and 1996 Annual Reports and Trustee's Final Report. Eva Mae also challenges in general the district court's re-affirmation of the 1995 annual report, as well as its approval of the 1996 annual report and the trustee's final report. The 1995 annual report was approved by the district court on March 28, 1996. No appeal was taken from that approval order and the merits of that matter were not pleaded or reconsidered by the district court during the present action. We determine this issue is not before us on this appeal.

With regard to the 1996 annual report and the trustee's final report, the burden is on the trustee to sustain these reports and the burden is on Eva Mae to sustain allegations of impropriety. *See In re Willcockson*, 368 N.W.2d 198, 204 (Iowa App. 1985). Eva Mae offers little reason to challenge the reports or the district court's approval order. Vincent's actions and accountings have been well-documented and

we find no indication Vincent's activities as trustee were either arbitrary or capricious. *See id.* Accordingly, we affirm the order of the district court approving the 1996 annual report and the trustee's final report.

AFFIRMED.

No. 98-1209. [1998-83 (9-270)] IN RE TRUST OF FREIBURGER

Appeal from the Iowa District Court for Delaware County, K.D. Briner, Judge.
AFFIRMED. Heard by Sackett, C.J., and Vogel, and Zimmer, JJ. Opinion by Zimmer,
J. (9 pages \$3.60)

John Frieburger died in June 1971. Pursuant to his will, a trust was created to provide income for his son, Carl, and his daughter, Grace, for their natural lives. Eva Mae was appointed guardian for Grace, Earl was appointed as her conservator, and Vincent was appointed as trustee. They are also John's children. After Carl and Grace died, Vincent—pursuant to the terms of the will—sold the remaining trust assets and closed out the trust. Following hearing, the district court entered an order approving an annual trustee report, the final trustee report, and the trustee's application for attorney's fees. **OPINION HOLDS: I.** Eva Mae first contends Vincent, as trustee, improperly refused to use the assets of the trust to pay for the care of the lifetime beneficiary, Grace. She argues the trustee improperly obtained on Grace's behalf Medicaid benefits from the State. Her claim is without merit. **II.** Eva Mae next claims the district court erred in approving payment of fees incurred by Vincent and his attorneys in attempting to sell a farm held by the trust. We determine the fees sought were reasonable and appropriate and were properly approved by the district court. **III.** Eva Mae argues the district court, in admitting evidence related only to the 1996 annual report and the trustee's final report, improperly excluded evidence of financial activities from previous years. We disagree. Pre-trial filings did not raise the possibility the trustee would be required to defend past activities or accusations of fraud. Moreover, the issues to be resolved at the hearing were revisited and clarified at its commencement and no mention was made by Eva Mae of her intent to raise matters related to past trust activities. Finally, many of

the matters Eva Mae sought to raise had already been resolved by her approval of previous annual trust reports and by prior court rulings. We determine the district court did not abuse its discretion in limiting the scope of the hearing by rejecting evidence pertaining to past financial activities of the trust. **IV.** Eva Mae also challenges in general the district court's re-affirmation of the 1995 annual report, as well as its approval of the 1996 annual report and the trustee's final report. The 1995 annual report was approved by the district court on March 28, 1996. No appeal was taken from that approval order and the merits of that matter were not pleaded or reconsidered by the district court during the present action. We determine this issue is not before us on this appeal. With regard to the 1996 annual report and the trustee's final report, Eva Mae offers little reason to challenge the reports or the district court's approval order. Vincent's actions and accountings have been well-documented and we find no indication Vincent's activities as trustee were either arbitrary or capricious. We affirm the order of the district court approving the 1996 annual report and the trustee's final report.