IN THE COURT OF APPEALS OF IOWA

No. 0-685 / 90-1035

109

IN THE MATTER OF THE ESTATE OF KATHERINE M. FRIEDRICHSEN,
Deceased

DELL LAWRENCE,

Appellant.

FILED
JAN 2 9 1991
CLERK SUPREME COURT

Appeal from the Iowa District Court for Clinton County, C.H. Pelton, Judge.

Lawrence appeals a district court ruling granting the executor's motion to dismiss Lawrence's motion for court order and resistance to allowance of fees. **AFFIRMED.**

Dell Lawrence, Marion, pro se for appellant.

Gary J. Rolfes of Mayer, Mayer, Lonergan & Rolfes, Clinton, for appellee estate.

Heard by Oxberger, C.J., and Donielson, and Hayden, JJ.

OXBERGER, C.J.

In June 1988, the estate of Katherine Friedrichsen was closed and a final report filed. Lyle Lawrence, a beneficiary of the estate, filed with the court a receipt and waiver of notice concerning the final report. The final report was never appealed.

Lyle Lawrence died on March 10, 1989. Dell Lawrence was appointed co-executor of the estate of Lyle Lawrence. On May 16, 1990, Dell Lawrence filed a "resistance to allowance of fees" and a "motion for court order" concerning the Friedrichsen estate. The estate filed a motion to dismiss arguing the movant lacked standing to reopen the estate and the action was barred by Iowa Code section 633.487 (1989). The district court granted the motion to dismiss, finding Lawrence failed to assert a cause of action against the estate. Lawrence appealed.

We review this matter for correction of errors at law. Iowa R. App. P. 4. In Giltner v. Stark, 252 N.W.2d 743, 744 (Iowa 1977), the court stated:

> A motion to dismiss a petition should 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 statement of facts which could be proved in support of the claim asserted. [authorities omitted].
>
> The grant or denial of a motion to dismiss is not discretionary but must be determined upon sound legal grounds. [authorities omitted].

Iowa Code section 633.487 states:

> No person, having been served with notice of the hearing upon the final report and accounting of a personal representative or having waived such

> notice, shall, after the entry of the final order approving the same and discharging the said personal representative, have any right to contest, in any proceeding, other than by appeal, the correctness or the legality of the inventory, the accounting, distribution, or other acts of the personal representative, or the list of heirs set forth in the final report of the personal representative, provided, however, that nothing contained in this section shall prohibit any action against the personal representative and the personal representative's surety under the provisions of section 633.186 on account of any fraud committed by the personal representative.

An appeal from a matter of this sort must be taken within thirty days from the entry of the order closing the estate. Iowa R. App. P. 5(a). The trial court properly found that the time for objecting to the amount of fiduciary, attorney's and accountant's fees was prior to approval of the Final Report and the closing of the Katherine M. Friedrichsen estate. The failure to object at that time bars the present appeal.

In his brief, Lawrence makes various statements about fraud but the petition filed in the district court did not allege fraud. We do not address issues not presented and passed upon by the trial court. Suckow v. Neowa FS, Inc., 445 N.W.2d 776, 780 (Iowa 1989).

We find that the trial court properly dismissed appellant's petition.

AFFIRMED.