

IN THE COURT OF APPEALS OF IOWA

FILED

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CLERK SUPREME COURT

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IN THE MATTER OF THE GUARDIAN-
SHIP AND CONSERVATORSHIP OF
META ALT.

VELMA POWELL, as Guardian and
Conservator of Meta Alt,

Conservator-Appellee,

vs.

LARRY SCHROEDER, JANICE O'NEAL,
CYNTHIA WHEELER, and KEITH
SCHROEDER,

Objectors-Appellants.

Filed November 30, 1987

7-352
87-33

Appeal from the Iowa District Court for Scott County (47048), Margaret
S Briles, Judge.

The objectors appeal the decision of the trial court to approve the accounts
and reports of the conservator with the exception of the amount of rent received
for the farmland of the ward. **AFFIRMED IN PART; REVERSED IN PART.**

Walter Conlon of Metcalf, Conlon & Siering, Muscatine, for objectors-
appellants/cross-appellees.

Edward N. Wehr of Wehr & DeLange, Davenport, for
conservator-appellee/cross-appellant.

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

HAYDEN, J.

The objectors appeal the decision of the trial court to approve the accounts and reports of the conservator, Velma Powell, with the exception of the amount of rent received for the farmland of the ward, Meta Alt. The objectors assert the trial court erred by not using the proper measure of damages. They also assert the trial court erred by not awarding reasonable interest on the damages awarded, by not awarding punitive damages as a surcharge against Powell, and by approving the claims of Powell and her attorney for fees. The objectors' final assertion is any claims of nonobjecting family members are barred due to waiver and laches, and if not barred, the objectors' attorney should be awarded compensation from them on the basis of quantum meruit. In her cross-appeal, Powell contends the trial court erred by not approving the amount of rent received for the farmland. Both the objectors and Powell challenge some evidentiary rulings, and the parties disagree on our scope of review.

I. Background. Powell is the daughter of Meta Alt. She served as conservator from August 21, 1980, until Meta's death on February 19, 1985. The objectors are four grandchildren of Meta, each entitled to one-sixteenth of her estate. The main asset of the estate was a 168-acre farm. Powell leased this farm to her son, Gerald Powell, for \$2,500 per year from 1980 to 1986. She did not receive prior approval from the court for this lease.

Before 1980, Meta lived at the farm and was cared for by her son, Gustave Alt. Gustave leased the farm from her for \$2,500 per year. When Gustave died in 1980, the conservatorship was opened to manage Meta's finances and pay her nursing home and medical bills. At the commencement of the conservatorship, the value of the farm was approximately \$168,000. However, during the ensuing years, the depressed farm economy resulted in a substantial decline

in the value of the farm. Ultimately, it was sold at auction for \$88,000 to Richard Powell, also a son of Velma, in 1986.

II. Scope of Review. Generally, a hearing on objections to a fiduciary's final report is an equitable proceeding. Iowa Code § 633.33; In re Estate of Roehlke, 231 N.W.2d 26, 27 (Iowa 1975). Thus, our review would be *de novo*; although we would give deference to the trial court's findings of fact, we would not be bound by them. In re Estate of Roehlke, 231 N.W.2d at 27. Powell contends, however, the parties impliedly consented to try the action at law. She notes evidentiary objections were ruled on by the trial court as support for her contention.

We disapprove of the practice of making evidentiary rulings in equitable cases, since such rulings can make *de novo* review impossible by excluding necessary evidence from the record. Sille v. Shaffer, 297 N.W.2d 379, 381 (Iowa 1980). These rulings do not, however, destroy the equitable nature of the proceeding, particularly where, as here, we have all of the evidence ruled inadmissible available in the record as proffered exhibits. We conclude this case was tried in equity and our scope of review is *de novo*. As such, we do not address the trial court's alleged errors in *excluding or admitting certain evidence*.

III. Sufficiency of Rent Received. Powell asserts the trial court erred by not approving the \$2,500 per year she received as rent from her son from 1980 to 1986. Her first contention is prior court approval of the interim reports covering the 1981 and 1982 lease periods shield her from any liability arising from her actions in those years. Powell does not, however, cite any authority in support of this contention, so we consider it waived. Iowa R. App. P. 14(a)(3).

Her second contention is her conduct in leasing the farm for \$2,500 per year was reasonable and done in the exercise of ordinary care at that time. Iowa Code section 633.123(1) provides, in pertinent part:

In acquiring, investing, reinvesting, exchanging, retaining, selling and managing property for the benefit of another, a fiduciary shall exercise the judgment and care under the circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for the purpose of speculation, but with regard to the permanent disposition of their funds, considering the probable income, as well as the probable safety, of their capital.

If a fiduciary breaches this duty by any negligent or willful act or nonfeasance in the fiduciary's administration of the ward's estate by which loss to the estate arises, the fiduciary shall be liable and chargeable for such loss. Iowa Code § 633.160.

In this case, expert witnesses placed the rental value of the property between \$4,437 per year and \$8,720 per year. The trial court found these appraisals partially inadequate, since they apparently did not all consider the fluctuating price of corn, the availability of new tenants, and the decline in property values due to the depressed farm economy. Taking these considerations into account, the trial court found the annual fair rental value, averaged over the entire period of the conservatorship, to be \$4,300. The court concluded Powell's rental of the land for \$2,500 per year to her son, although made in good faith, was negligent. We agree. Even the appraisal introduced by Powell placed the rental value of the land at \$4,437 per year. And this appraisal apparently assigned no rental value to the residence on the property. We find, based on our review of the record, the trial court was correct in finding the fair market value of the property, averaged over the entire period of the conservatorship, was \$4,300 per year. We conclude, as did the trial court, it was negligent for Powell to rent the farm for less than this amount and, thus, Powell is chargeable for the lost rent.

IV. Additional Damages. The objectors assert the trial court erred in not charging Powell for the decline in the value of the estate assets which

occurred during the time Powell was negligently leasing the property. They assert these damages were just as much the result of Powell's continuation of the lease as were the damages of lost rent. The essence of their contention is that Powell was negligent in not selling the farm before its value declined.

We find it significant the property involved in this case was a small, family farm, upon which Meta had lived for a number of years. It was reasonable for Powell to decline to sell it immediately after placing Meta in a nursing home. We also find it significant the farm economy was severely depressed during the period in question. This resulted in a substantial decline in value of the farmland. The objectors cite no cases holding that a conservator has a duty to sell the property under these circumstances, and we have not found any. We find Powell was not negligent in failing to sell the farm before the market price for farmland dropped. We therefore conclude Powell cannot be charged for the amount of value the farm declined before its sale in 1986.

We also conclude Powell may not be surcharged punitive damages, since we find, in accord with the trial court, she never acted in bad faith.

The objectors' final assertion regarding damages is the trial court should have awarded reasonable interest from the commencement of the lease. We agree. The trial court's award was merely the difference between what Powell actually received and what she should have received. The conservatorship was denied the use of this lost rent through Powell's negligence. We conclude an award of simple interest on the lost rent at the legal rate of ten percent is, therefore, just and appropriate. Cf. Bettendorf v. Bettendorf, 190 Iowa 83, 129, 179 N.W. 444, 464 (1920) (fiduciary who fraudulently purchased a beneficiary's property for an inadequate price charged with interest on the difference between the fair price and the price paid from the date of purchase).

V. Conservator's Compensation. The objectors assert the trial court should not have awarded compensation to either Powell or her attorney. Iowa Code section 633.162 provides:

In fixing the fees of any fiduciary, the court shall take into consideration any violation of this Code by the fiduciary, and may diminish the fee of such fiduciary to the extent the court may determine proper.

Generally, a fiduciary who neglects his duties in bad faith forfeits his right to compensation. Booth v. Bradford, 114 Iowa 562, 572, 87 N.W. 685, 688 (1901); In re Guardianship and Conservatorship of Liggett, 327 N.W.2d 779, 782 (Iowa App. 1982). The matter of compensation is, however, at the discretion of the court. Liggett, 327 N.W.2d at 782.

We have already stated we find, in accord with the trial court, Powell did not act in bad faith. Powell merely rented the farmland for the amount it had been rented for prior to the conservatorship. Although this was negligence in light of the fair market rental value of the property, we cannot say Powell's action was so culpable as to forfeit her right to compensation, in full or in part. We conclude the trial court was correct in awarding her and her attorney compensation.

VI. Claims of Nonobjectors. The objectors assert any claims of non-objecting family members are barred due to waiver and laches. If not barred, they assert their attorney should be awarded compensation from the nonobjectors on the basis of quantum meruit. The objectors do not, however, cite any authority in support of these assertions, so we consider them waived. Iowa R. App. P. 14(a)(3).

AFFIRMED IN PART; REVERSED IN PART.