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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 1-253 / 90-1001

IN THE MATTER OF THE ESTATE OF FRANK G. ROGERS, JR.,
Deceased.

DEBORAH CHRISTOPHER,

Appellant.

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Appeal from the Iowa District Court for Butler County, Gilbert K. Bovard, Judge.

Deborah Christopher appeals a district court ruling denying her objections to the final report of the executor for the estate of Frank Rogers. **AFFIRMED.**

Gerald J. Kucera of Tom Riley Law Firm, P.C., Cedar Rapids, for appellant.

James E. Walsh, Jr. and Patrick C. Galles of Clark, Butler, Walsh & McGivern, Waterloo, for appellee Estate.

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

PER CURIAM

Frank Rogers, Jr., a farmer, died on February 28, 1986. Frank was survived by his wife, Marlene, five children from his marriage with Marlene, and a daughter from a prior marriage, Deborah Christopher. Frank's will was admitted to probate on March 26, 1986. Pursuant to the will, Marlene was named executor. The will also provided for a specific bequest of $25,000 to Deborah.

Following notice to creditors, the estate was confronted with many creditors demanding payment. Eventually, on May 15, 1987, the probate inventory for the estate was filed reflecting a negative balance of $1,079,249. On May 14, 1987, the farm equipment, vehicles, and livestock were sold to a corporation operated by three of Frank's sons to satisfy certain indebtedness. Deborah contends this sale was for less than fair market value. Between May 1987 and June 1987 the remaining claims against the estate were settled. In December 1988 a notice of final report was filed.

Deborah objected to the final report claiming she was deprived of her $25,000 bequest as a result of mismanagement of the estate. Although the district court was critical of Marlene's accounting methods, it approved the final report and accounting and concluded the estate had insufficient assets to pay the $25,000 bequest.

Deborah appeals claiming the district court erred in approving the final report because the executor (1) sold

substantial assets of the estate to a related party for less than fair market value, (2) continued the business of farming without court approval, (3) paid questionable expenses, and (4) employed inadequate accounting procedures. Deborah also argues she is entitled to punitive damages.

A hearing on objections to a fiduciary's final report is an equitable proceeding under Iowa Code section 633.33; therefore, our review is de novo. Iowa R. App. P 4. We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

When objections are filed, the executor generally has the burden of proof to sustain all matters raised in the final report. In re Smith, 223 Iowa 172, 271 N.W. 888 (1937). The trial court determined the executor met her burden of proof on each objection. We agree. We address each of Deborah's objections in turn.

A. Sale to a Related Party for Less than Fair Market Value. Deborah seeks to convey the impression the estate grossly undervalued its assets and embarked on a systematic program to deprive her of her bequest by selling the assets to a related family corporation at unreasonably low values. Her contention is neither supported by the record nor convincing to the court.

The rule has long been recognized in Iowa when power to sell has been given to the personal representative in a

will, statutory sale procedure need not be followed. DeLong v. Scott, 217 N.W.2d 635, 637 (Iowa 1974). The executor acts under the power given by the will, and not under the authority of the court. This rule is codified in Iowa Code section 633.383. Marlene Rogers was granted discretionary power of sale in Frank Rogers' will.

The trial court found, and we agree, at no time were there sufficient assets in the estate to satisfy the specific bequest to Deborah. The initial inventory recapitulation showed liabilities of the estate greatly in excess of assets. The interim report also reflected a large net deficit. The final report continued to show insufficient funds even to pay expenses. Even Deborah's accounting expert testified Frank Rogers was an insolvent farmer prior to his death probably facing bankruptcy.

Deborah claims the estate's assets were undervalued prior to sale. To support her assertion, Deborah relied on values reflected in an insurance inventory statement for the farm machinery, harvested crops, and livestock. Because the total value in the insurance statement was greater than the total value listed on the probate inventory Deborah claims the probate assets are undervalued. Her argument ignores the fact the values for the items listed in the insurance statement were replacement values. Realistic fair market values of used agricultural items are not related to replacement values of assets for insurance purposes.

It is also worth noting the adverse economic climate which existed preceding and during probate of the estate. As stated by the trial court, "The farm economy resemble[d] a swimmer caught in a strong undertow." Between January and June of 1986 the real property value of the estate decreased by $18,690. During the probate proceedings, the livestock experienced various swine-related diseases, thus having a detrimental impact on the value and marketability of the livestock. The machinery and equipment listed in the probate inventory were rapidly declining in value, paralleling the overall decline in farm prices.

Objector also points out a discrepancy in the number of bushels of corn reflected in the insurance and probate documents. This discrepancy is explicable, however, because the decedent insured his crop for the maximum potential rather than the actual amount of harvested corn on hand.

Finally, Deborah claims several pieces of farm machinery were not included in the probate inventory, yet the same items were included in the inventory list when sold to the decedent's sons which further undervalued the estate. The record regarding this objection is not clear. Deborah's attorney provided this court with little assistance to support or explain this objection as he failed to cite adequately to the record. Nevertheless, even assuming Deborah's allegations to be true, adding all claimed undervaluations to the estate deficiency will not result in a solvent estate.

Furthermore, at no time did Marlene request a widow's allowance, executor's fee, or elect to take against the will. This of itself strongly repels any insinuations of suspicion of actual fraud. In re Eschweiler's Estate, 202 Iowa 259, 209 N.W. 273 (1926).

B. Continuing the Business of Farming without Obtaining a Court Order. Deborah contends Marlene violated Iowa Code section 633.83 by failing to obtain court approval to continue the business operation. Section 633.83 states "the court may authorize the fiduciary to continue any business of the estate for the benefit thereof." (emphasis added). This section does not require court approval to continue a business while the estate is in the process of satisfying creditors and winding up the affairs of the estate. We find this objection to be without merit.

C. Questionable Expenses. Deborah contends the estate paid questionable expenses totaling more than $163,000. The trial court determined improper expenditures were reflected in the accounting for flying lessons and attorney services. The trial court went on to state it was incumbent upon Deborah to show the improprieties affected her bequest. In this respect, the trial court erred. The burden of proof to sustain all matters raised in the final report remains upon the executor. Matter of Estate of Bruene, 350 N.W.2d 209, 214 (Iowa App. 1984).

Taking the trial court's mistake into consideration, however, does not change the fact the estate was insolvent and unable to satisfy Deborah's specific bequest.

D. Inadequate Accounting Procedures. In approving the executor's final report and accounting, the trial court stated, "The accounting exhibited here is unsatisfactory, amateurish, confusing, and subject to criticism." Deborah asserts such amateurish accounting did not happen by mistake, but rather was presented by design. Although this estate was poorly accounted for, we find no evidence of bad faith. Marlene carried her burden on this issue.

E. Punitive Damages. Deborah seeks punitive damages claiming Marlene committed an act of gross negligence, fraud, or a wrongful act done either intentionally, maliciously, or with reckless disregard for Deborah's rights. We find no willful, reckless, or wanton conduct on the part of Marlene. There is no factual basis for considering an award of punitive damages in this case.

F. Conclusion. We affirm the trial court in every respect. Costs of this appeal are taxed to Deborah.

AFFIRMED.