IN THE COURT OF APPEALS OF IOWA

No. 5-029 94-216

IN RE THE ESTATE OF JOHN JOSEPH DZUIBA,
Deceased.

MICHELLE DZUIBA, ROSE MARY DZUIBA, and CHRISTINE DZUIBA,

Claimants-Appellants.

vs.

CONRADA B. ROSZKOWSKI, Fiduciary of the Estate of John Joseph Dzuiba,

Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Jack D. Levin, Judge.

Claimants appeal from a ruling of the district court that a provision in a divorce decree ordering deceased to maintain life insurance on his life in their favor became invalid once the children have reached the age of majority. **AFFIRMED.**

William Jeffrey Crispin of Wilson & Adams, P.C., Des Moines, for appellants.

James M. Meade, West Des Moines, for appellee.

Considered by Donielson, C.J, Hayden, J., and Keefe, S.J.*

*Senior judge from the 1st Judicial District serving on this court by order of the Iowa Supreme Court.

KEEFE, S.J.

Rose Mary and Joseph Dzuiba were married eleven years when they were divorced in Florida in 1975. At the time of the divorce, they were the parents of three daughters, Rose Mary, born November 30, 1964, Christina, born May 17, 1969, and Michelle, born March 31, 1971. Pursuant to a property settlement agreement and addendum, Joseph agreed to pay Rose Mary child support in the amount of sixty dollars per week. He also agreed to continue in force a viable medical insurance program for the children. In addition, Joseph agreed that he would maintain a life insurance policy through the telephone company for the benefit of the children. He also agreed to help Rose Mary secure a college education for the children.

Following the divorce, Joseph revised his will several times, once in 1981 and again in 1985. In each of these wills, his daughters were named as beneficiaries. However, his last will, dated February 1, 1991, removed his daughters as beneficiaries of the life insurance, instead leaving them only $100 each. His estate was named as beneficiary of the insurance policy proceeds. His sister, Conrada Roszkowski, was granted a one-half interest in the estate, the remainder to be divided between nieces and nephews. Joseph died on December 9, 1991, and his will was submitted for probate on December 12, 1991. Each of Joseph's daughters filed a claim in probate for one-third of the insurance proceeds, which totaled $70,000.

Following a hearing, the probate court issued a ruling denying the three daughter's claims. They subsequently filed an appeal to the district court which affirmed the probate court's ruling. The daughters have appealed.

The claimants argue that the property settlement agreement filed by parties in 1975 vested in each of them an undefeatable vested interest in Joseph's life insurance policy. They argue there was no language in the decree limiting the coverage under the policy to those children under the age of eighteen. They assert the coverage was intended to continue after they reached eighteen years of age. The daughters additionally maintain that the age of majority is determined pursuant to the date of the decree, not at the time of the policy holder's death. At the time of the decree, the age of majority in Florida was twenty-one. At the time of Joseph's death, Michelle was only twenty years of age.

I. The first issue to be decided is the scope of review by this court. The claims filed in this estate were first decided by an associate probate judge in Polk County. Iowa Code section 633.20 (1993) authorizes the chief judge of a judicial district to appoint an associate probate judge to perform judicial functions as the court prescribes. Under Iowa Rule of Probate Procedure 4.1(a)(1), an associate probate judge who is so appointed is authorized to perform all duties required of masters appointed by the court in civil actions (Iowa R. Civ. P. 207-214). The associate probate judge here was so appointed by the Fifth Judicial District.

Iowa Rule of Civil Procedure 214 states, "The court shall accept the master's findings of fact unless clearly erroneous." The Iowa supreme court stated in *Rowen v. LeMars Mut. Ins. Co.*, 347 N.W.2d 630, 634 (Iowa 1984):

> Our review of the district court's decision remains de novo. In reviewing the master's findings of fact, however, we are in the same position as the district court. Like the district court, the court must "review the evidence before the master in an equity case to determine whether the findings adopted by the [district] court are clearly erroneous."

Id. (*citing Iowa Public Service Co. v. City of Sioux City*, 252 Iowa 380, 386, 107 N.W.2d 109, 112 (1961)).

II. Here, the associate probate judge, after a full hearing, made a determination that the claimants' rights to decedent's life insurance proceeds terminated at the time the decedent's support obligation ceased. This holding was set forth in a detailed and well-written opinion. It set forth all the pertinent facts and the applicable Iowa and Florida law. The district court reviewed and evidence and the decision of the associate probate judge and found:

> The Findings of Fact of the Associate Probate Judge, entered herein are not clearly erroneous.

The court relied upon *In re Estate of Black*, 451 N.W.2d 196 (Iowa App. 1989) and *Stockhouse v. Russell*, 447 N.W.2d 124 (Iowa 1989) to determine that the conclusions of law of the associate probate judge were correct. These findings were approved and adopted by the district court.

III. This court has also reviewed the evidence and the ruling of the associate probate judge and the district court. We find that there are no "clearly erroneous" findings of fact in the associate probate judge's decision. Upon our de novo examination of the district court decision, we find the district court was correct in approving and affirming the denial of claimant's petition by the associate probate court.

We affirm the district court. Costs of this appeal are assessed to claimants.

AFFIRMED.