FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 3-539 / 92-2024

IN THE MATTER OF THE ESTATE OF RUBY DAMMANN, Deceased,

RICHARD DAMMANN, GERI SPIES, NANCY McCORD and SANDRA HAAS,

Plaintiffs-Appellants,

vs.

LeROY H. DAMMANN and FREDA DAMMANN, Individually, LeROY DAMMANN, As Executor of the Estate of Ruby Dammann, and THE ESTATE OF RUBY DAMMANN,

Defendants-Appellees.

Appeal from the Iowa District Court for Carroll County, Gary L. McMinimee, Judge.

The plaintiffs appeal from a judgment of the district court ordering the personal representative of the decedent not to reopen the estate of decedent's husband. **AFFIRMED.**

Robert Kohorst of the Kohorst Law Firm, Harlan, for appellants.

Dee Ann Wunschel Crouse and Russell S. Wunschel of the Wunschel Law Firm, for appellees.

Considered by Hayden, P.J., and Sackett and Cady, JJ.

SACKETT, J.

The issue in this appeal is whether the district court should have ordered the executor of the estate of Ruby Dammann to reopen the estate of Lester Dammann. Lester was Ruby's spouse, and he predeceased her. We find the district court correctly decided the issue and affirm.

Lester and Ruby are the parents of five children. Four of the children, Richard Dammann, Geri Spies, Nancy McCord and Sandra Hass, are plaintiffs-appellants. The fifth child, LeRoy H. Dammann, together with his wife, Freda Dammann, are defendants-appellees.

Lester died testate in July 1986, and his children, LeRoy and Sandra, were named as co-executors of his estate. Lester's will gave all his personal property and a life estate in his real estate to Ruby. The five children were given the remainder interest in real estate.

In 1976 Lester had written a $33,000 check to LeRoy. On October 1, 1980, LeRoy and Freda had purchased farm machinery from Lester and Ruby for $75,000 and gave a promissory note to Lester for $57,500. Twenty-five thousand dollars was paid on principal of the note before Lester's death. Neither transaction was noted in the documents filed in Lester's estate, and the promissory note given October 1, 1980, was not listed as an asset. Lester's estate was closed on August 3, 1987.

Ruby died on March 8, 1989. Her estate was opened on March 15, 1989, and LeRoy and Freda were originally appointed executors.

This is the third appeal to this court by this family over the disposition of their parents' assets. The first appeal concerned Ruby's will. The will presented for probate in Ruby's estate was drawn after Lester's death. The will left all of Ruby's real estate to LeRoy. The four other children filed an action to set the will aside contending LeRoy had exerted undue influence on his mother in having the will drafted. The trial court set aside a jury verdict finding undue influence, and, in an unpublished opinion, we reversed and reinstated the verdict on appeal. In re Estate of Dammann, 485 N.W.2d 108 (Iowa App. 1991).

The second appeal concerned a petition Sandra filed to reopen the estate of Lester. Sandra contended Lester's $33,000 check to LeRoy in 1976 was a loan that was not repaid and LeRoy and Freda had an obligation to Lester on the note given in October 1980.

The trial court denied the petition finding the alleged claims against LeRoy on the two loans would have passed to Ruby under Lester's will and the executors of Ruby's estate were the proper parties to bring the action. An appeal was filed from that ruling, and this court affirmed in a unpublished opinion. In re Estate of Dammann, ___ N.W.2d ___ (Iowa App. 1993).

This appeal concerns a trial court order entered following an application for direction filed by Art Neu. Neu was appointed as successor executor to LeRoy and Freda

and filed an application to have the court rule on whether he should reopen Lester's estate for the purpose of including as assets in Lester's estate money some heirs were alleging LeRoy owed his father. In making the application, Neu reported to the court he had concluded the balance due on the machinery contract had been forgiven. After a hearing, the trial court determined Neu should not reopen Lester's estate. This appeal followed.

Appellants contend the trial court should have ordered the Lester Dammann estate reopened because there were newly discovered assets and LeRoy Dammann, as executor of the Lester Dammann estate, committed a fraud. We affirm.

This proceeding is in equity, and we review de novo. See In re Estate of Thomas, 454 N.W.2d 66, 67 (Iowa App. 1990).

Appellants contend the $33,000 check in 1976 was a loan and there was at the time of Lester's death a balance due on the October 1980 note of $32,500 plus interest. They contend these two assets are newly discovered assets of the estate of Lester Dammann. They seek to have the estate reopened under Iowa Code section 633.489 which, in pertinent part, provides:

> Upon the petition of any interested person, the court may, with such notice as it may prescribe, order an estate reopened if other property be discovered, if any necessary act remains unperformed, or for any other proper cause appearing to the court.

Under Lester's will, Ruby inherited all his personal

property. The allegedly newly discovered property was personal property, and, if it had been included as an asset in Lester's estate, it would have passed to Ruby. Ruby was alive when Lester's estate was closed. She had notice of the closing of the estate and made no objection. There was evidence Ruby was aware of both the 1976 check and the 1980 note. Ruby told Sandra in November 1987 that Leroy's failure to re-pay the $33,000 bothered her and, at the same time, she told Sandra that Lester told her before he died the note given in 1980 had been forgiven. The trial court found there was substantial evidence Ruby knew about both transactions. We have reviewed the facts and find no reason to disagree with this assessment.

Ruby, having been given notice of the final report, therefore, was bound by the provisions of it as she would be bound by an other final judgment. See Iowa Code § 633.36; see also Ritz v. Selma United Methodist Church, 467 N.W.2d 266, 270 n.2 (Iowa 1991).

We affirm the trial court.

AFFIRMED.