IN THE COURT OF APPEALS OF IOWA

No. 3-463 / 92-1261

FILED
NOV 29 1993
CLERK SUPREME COURT

IN THE MATTER OF THE ESTATE OF LESTER K. DAMMANN, Deceased,

RICHARD DAMMANN, GERI SPIES, NANCY McCORD and **SANDRA HASS,**

Appellants,

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vs.

LeROY H. DAMMANN and **FREDA DAMMANN,** Individually, and **LeROY H. DAMMANN, As Executor of the ESTATE OF LESTER K. DAMMANN,**

Appellees.

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

Beneficiaries appeal the district court order dismissing their motion to reopen the estate of Lester Dammann. **AFFIRMED.**

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

Dee Ann Wunschel Crouse and Russell A. Wunschel of Wunschel Law Firm, P.C., Carroll, for appellees.

Heard by Oxberger, C.J., and Sackett and Habhab, JJ. Donielson, J., takes no part.

OXBERGER, C.J. 000112

Lester and Ruby Dammann were the parents of LeRoy Dammann, Richard Dammann, Geri Spies, Nancy McCord, and Sandra Hass. In 1976, Lester loaned LeRoy $33,000 for a down payment on a farm. This money was never repaid. On October 1, 1980, Lester sold LeRoy some farm machinery. LeRoy gave his father a promissory note for $57,500.

On July 7, 1986, Lester died testate. LeRoy and Sandra served as coexecutors of Lester's estate. LeRoy still owed $32,500 of principal, plus interest, for the farm machinery. This was not listed in the inventory of Lester's estate, nor was the $33,000 loan. The estate was closed August 3, 1987.

The bulk of Lester's estate passed to Ruby. After Ruby complained of not having enough money, Sandra investigated and learned of her brother LeRoy's debt to her father.

Ruby died on March 8, 1989. A will dated April 20, 1988, naming LeRoy and Freda Dammann as executors was admitted into probate.

On July 18, 1990, Sandra filed a petition to reopen the estate of Lester Dammann because of additionally discovered assets, and specifically alleged claims against LeRoy for the farm loan and machinery note. The district court found Lester's will would have devised these assets to Ruby. The court dismissed Sandra's petition, ruling the executors of Ruby's estate were the proper parties to bring this action.

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Appellants successfully contested Ruby's April 20, 1988, will. On September 13, 1991, appellants filed a petition to reopen the estate of Lester Dammann. On March 31, 1992, the court named Arthur Neu executor of Ruby's estate.

On May 11, 1992, after a hearing, the court dismissed appellants' September 13, 1991, petition, finding that it should be brought by the executor of Ruby's estate. Appellants filed a motion to vacate the order dismissing their petition to reopen. They argued, among other things, that Ruby's second will is also invalid, that she died intestate, and that they are among her heirs. After a telephonic hearing, the court overruled the motion. Appellants filed this appeal.

In separate proceedings, Neu filed an application for a hearing on money due from LeRoy on the machinery note and the farm loan. After a hearing the court found that the loan and machinery note did "not appear to have been fraudulently concealed from Ruby Dammann." The court did not authorize the executor of Ruby's estate to try to reopen Lester's estate unless he became aware of new information.

Appellants appeal the district court's refusal to reopen Lester Damman's estate. The district court found that the proper party to petition for the estate to be reopened is the executor of Ruby's estate. We agree and we affirm the district court.

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In its decision, the district court acknowledged petitioners' interest in the outcome of the matter. However, the district court noted that all property interests they have in the Rudy Dammann Estate are subject to the "possession of the personal representatives . . . and the control of the court for purposes of administration, sale or other disposition under the provisions of law. . . ." Iowa Code 633.350 (1991). The court noted that the executor of the Estate of Ruby Dammann was the appropriate party to bring any action in this regard. Further, the court held that to permit petitioners to bring this suit would be inconsistent with the public policy of the Code.

We also note that Iowa Code sections 633.488-489 permit reopening under other circumstances. However, appellants either fail to qualify under those provisions (no receipt of notice) or fail to raise such a provision to the court (newly discovered property, etc.). We do not review issues not presented to the district court. Iowa Dep't of Human Svs. v. Duckert, 465 N.W.2d 871, 873 (Iowa 1991).

Accordingly, we affirm the decision of the district court.

AFFIRMED.