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IN THE COURT OF APPEALS OF IOWA

ESTATE OF REUBEN STEINBERG,	)	
Deceased, RICHARD K. RICHARDS,	)	Filed November 22, 1978
Administrator,	)	
	)	
Appellant,	)	
	)	
vs.	)	
	)	652
	)	<u>2-61181</u>
WILLIAM N. DUNN,	)	
	)	
Appellee.	)	

Appeal from Hardin District Court - George G. Fagg and M. D. Seiser, Judges.

Administrator appeals trial court orders finding moot his motion for default judgment and dismissing his counterclaim for legal malpractice against claimant.
Affirmed.

Richard K. Richards, Ames, for Appellant.

Keith L. McCormick, Eldora, for Appellee.

Submitted to Oxberger, C.J., and Donielson, Snell and Carter, JJ.

PER CURIAM

Administrator of the estate of Reuben Steinberg, Richard Richards, appeals judgment dismissing his counterclaim for legal malpractice against claimant, William Dunn, and he appeals an order finding his motion for default judgment on the counterclaim moot. We affirm.

In 1974, decedent Steinberg engaged the legal services of Dunn in order to resist the condemnation of a portion of his property. After filing a \$750 cash bond, Dunn obtained a temporary injunction. This injunction was later dissolved and a permanent injunction denied. After the condemnation was completed, Dunn filed another action, alleging the condemnation was void for failure to give proper notice and praying for \$10,000 damages. The landowner seeking condemnation filed a motion to dismiss. This motion was set for hearing on July 12, 1974, but the hearing was never held. Steinberg was eventually awarded \$2740 by the condemnation commission, but Dunn refused to accept payment so as not to prejudice his client's right to pursue his damage claim.

After Steinberg's death on May 8, 1975, his nephew, Richards, was appointed administrator. Richards fired Dunn as attorney in the first injunction case for his failure to recover the \$750 cash bond. On November 10, 1975, Dunn filed a claim in probate for legal services rendered to Steinberg in the amount of \$515.62. The damage case was dismissed on January 27, 1976, for lack of prosecution.

Richards' contention that trial court erred in finding moot his motion for default in the probate case is without merit. Once Dunn filed a request for hearing on his claim, Richards was required to move or plead to the claim within 20 days, and thereafter, the action was governed by the Rules of Civil Procedure. Section 633.444, The Code. Dunn's filing of a motion to bar the counterclaim altered the time in which he was required to file an answer thereto. When Dunn's motion was overruled on November 3, he then had 10 days to file his answer. Rule 85(c)(1), R.C.P. Since this answer was filed on November 10, Richards' motion for default judgment for failure to timely plead was properly found moot. Richards incorrectly argues for the application of rule 85 as it existed prior to the 1976 amendments.

Richards also contends trial court erred by dismissing his counterclaim for

legal malpractice. Proceedings for the establishment of contested claims in probate are triable as law actions. Section 633.33, The Code. Accordingly, we are bound by trial court's findings if supported by substantial evidence. *Patterson v. Patterson*, 189 N.W.2d 601, 603 (Iowa 1971).

In the instant case trial court specifically found that Richards failed to show any damages to the estate as a result of Dunn's alleged mishandling of the damage claim. At trial, Richards relied on the fact that Dunn's petition in that case had prayed for \$10,000 damages. He argued that, therefore, Dunn's failure to pursue the case resulted in a \$10,000 loss to the estate. This was the only evidence of damages presented by Richards. On the other hand, there was testimony that the purpose of the lawsuit was to prevent the condemnation and not to recover money damages. Viewing the evidence in a light most favorable to the judgment, we find substantial evidence to support trial court's findings of fact in regard to the damages issue. We therefore affirm the judgment denying recovery to the estate.

Finally, Richards asserts that trial court showed partiality to Dunn and acted improperly by considering certain facts not introduced into evidence. We find nothing in the record to indicate that Richards objected below to the alleged acts of judicial impropriety. We cannot, therefore, consider this issue on appeal. See *Kengoreco, Inc. v. Jorgenson*, 176 N.W.2d 186, 191 (Iowa 1970).

AFFIRMED.