

IN THE COURT OF APPEALS OF IOWA

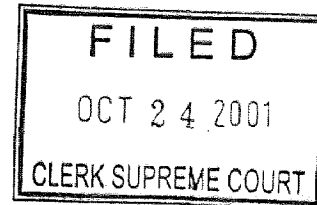
No. 1-557 / 00-1797
Filed October 24, 2001

IN THE MATTER OF THE ESTATE OF
NORMAN W. HEEREN, Deceased,

ELEANOR HEEREN,
Appellant/Cross-Appellee,

vs.

ARLAN HEEREN, Executor of the Estate
of Norman W. Heeren,
Appellee/Cross-Appellant.



Appeal from the Iowa District Court for Plymouth County, Michael S. Walsh, Judge.

Eleanor Heeren appeals, and the estate's executor cross-appeals, from a probate court order awarding Eleanor a monthly support obligation from the decedent's estate. **AFFIRMED ON BOTH APPEALS.**

Chadwyn D. Cox of Reynolds & Kenline, L.L.P., Dubuque, for appellant.

W. Eugene Collins of Murphy & Collins, Le Mars, for appellee.

Considered by Sackett, C.J., and Mahan and Hecht, JJ.

MAHAN, J.

Eleanor Heeren appeals, and the estate's executor cross-appeals, from a probate court order awarding Eleanor a monthly support obligation from the decedent's estate. Eleanor argues the probate court erred in ruling the estate's support obligation started in July 1999 rather than April 1997. On cross-appeal, the executor argues the court abused its discretion in fixing the amount of Eleanor's support. We affirm on both appeals.

Background Facts and Proceedings. Norman and Eleanor Heeren were married in 1971. Prior to their marriage, the parties entered into a prenuptial agreement that provided for a waiver of their rights to the other's property. The agreement further provided Norman would provide for Eleanor's support and maintenance from his personal estate, but if she suffered a long-term illness, then his obligation would be limited to \$5000 over and above any insurance benefits. In return, Eleanor agreed to quit work and become a housewife. By agreeing to this, Eleanor gave up her right to acquire additional property through her own efforts.

In April 1997, Eleanor separated from Norman and moved to Dubuque. She filed a petition for dissolution on June 29, 1998, requesting spousal support. Eleanor, however, did not make an application for temporary alimony or support during the pendency of the proceedings. Norman died prior to trial. On July 19, 1999, Eleanor filed both an election to take against Norman's will and an application for support allowance pursuant to Iowa Code section 633.374 (1999). After Norman's death, Eleanor's monthly social security benefits increased from

\$385 to \$874. In March 2000, Eleanor moved to the Luther Manor Nursing Home in Dubuque. Eleanor claimed monthly expenses of \$1681.

The case proceeded to a bench trial on June 6, 2000. On July 12, 2000, the probate court concluded Eleanor was entitled to support pursuant to the premarital agreement and Iowa Code section 633.374 for the remainder of her life. In calculating the amount of support, the court deducted from Eleanor's monthly expenses \$90 for nursing insurance no longer needed, \$131 for gifts, and the \$489 increase in social security benefits, leaving her with \$971 per month in uncovered expenses. The court therefore ordered the estate to pay Eleanor monthly support of \$971 and ordered the obligation to commence July 19, 1999. Both parties filed rule 179(b) motions, which the court denied.

Eleanor appeals, arguing the court erred in failing to order her support commence as of April 1997. On cross-appeal, the estate argues the entire amount of Eleanor's social security benefits should be deducted from her monthly expenses, leaving her with a monthly support need of \$616.

Spousal Allowance. We review a district court's order granting a spousal allowance for an abuse of discretion. *In re Estate of Epstein*, 561 N.W.2d 82, 87 (Iowa Ct. App. 1996). Broad discretion is given to the district court in making such allowance. *In re Chesmore's Estate*, 194 Iowa 300, 308, 189 N.W. 770, 774 (1922). "If there is a basis in the record for the district court's decision, we will not find an abuse of discretion." *In re Estate of Spurgeon*, 572 N.W.2d 595, 599 (Iowa 1998).

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The probate court ordered the estate to pay Eleanor monthly support of \$971 for the remainder of her life. In making that determination, the court considered Eleanor's age and health, the extent of Norman's estate, Eleanor's income and expenses, and what assets Eleanor was left with to support herself. Eleanor contends, and we agree, the court's reasoning in determining her monthly support needs was supported by the evidence. We cannot say the court's decision had no basis in the record. We therefore find the court did not abuse its discretion in awarding \$971 per month in spousal support to Eleanor.

The court also ordered the support obligation to commence July 19, 1999. Eleanor contends the support obligation should have commenced in April 1997, when she separated from Norman. Eleanor did not file her petition for dissolution of marriage until June 29, 1998. In addition, Eleanor did not make any application for temporary alimony or support during the pendency of the proceedings. Iowa Code section 633.374 clearly provides spousal support should only be awarded upon application by the surviving spouse. The record is clear Eleanor did not file such an application until July 19, 1999. We therefore conclude the court did not abuse its discretion in awarding the spousal support to commence July 19, 1999, the date of Eleanor's application.

AFFIRMED ON BOTH APPEALS.

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