

FILED

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CLERK SUPREME COURT
OF IOWA

IN THE COURT OF APPEALS

DWIGHT THOMPSON, HELEN)
THOMPSON, LILLIAN DOLINSEK and)
HENRY DOLINSEK,)

Plaintiffs-Appellees,) Filed April 29, 1980

vs.)

CHARLES W. CHAMBERLAIN or)
BLANCHE CHAMBERLAIN as)
Executor of the Estate of)
CHARLES W. CHAMBERLAIN,)

0-76
2-64034

Defendant-Appellant.

Appeal from Lucas District Court - Gibson C. Holliday, Judge.

Defendant appeals trial court's overruling of petition to vacate judgment in favor of plaintiffs. - Affirmed.

John A. Pabst, of Pabst & Pabst, Albia, for defendant-appellant.

Paul F. Christoffers, Chariton, for plaintiffs-appellees.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Defendant, Blanche Chamberlain, appeals trial court's overruling of petition to vacate judgment in favor of plaintiffs, Dwight Thompson, Helen Thompson, Lillian Dolinsek and Henry Dolinsek. We affirm.

Plaintiffs filed suit against defendants, Charles and Blanche Chamberlain, for damages sustained in an automobile accident. Charles died during the course of the litigation and plaintiffs moved that Blanche, as Charles' executor, be the substituted party for him. The counts against Blanche, in her individual capacity, were dismissed and the jury returned a verdict against Charles. Blanche moved to vacate the judgment on the ground she was not a substituted party liable for the judgment against Charles. That petition was overruled and Blanche's appeal centers on the substitution issue. Our review of her challenge is on errors assigned. Iowa R. Civ. P. 4.

Blanche claims she is not liable for the judgment against Charles because no order of substitution was entered by the trial court. She concedes Charles' estate was opened with her appointed as executor and an application for substitution was served on her. She claims, however, no substitution order was entered, and therefore there was no defendant against whom the judgment of the trial court could be executed. She asserts the question is jurisdictional since substitution was the only means for the court to obtain jurisdiction over her as Charles' personal representative.

The factual setting of this case defeats Blanche's claims and we find the trial court correctly held, by summary judgment on her motion to vacate, she was liable for the judgment as Charles' personal representative. Plaintiffs filed for substitution of Blanche as Charles' personal representative while she was in the court's jurisdiction. Although no order was specified as an order of substitution, the trial court captioned its statement of issues, jury verdict forms, and judgment entry with Blanche "as executor of the estate of Charles W. Chamberlain." The modification of the case caption was a prima facie order of substitution. Thus, Blanche's assertion no order of substitution was made is without merit.

Since the trial court substituted Blanche, as executor, for Charles, it correctly denied her motion to vacate.

AFFIRMED.