IN THE COURT OF APPEALS OF IOWA

No. 6-793 / 96-481

IN THE MATTER OF THE CONSERVATORSHIP OF AMY MARIE SMITH,

AMY MARIE SMITH,

Appellee,

vs.

EDWARD ALAN SMITH, Conservator,

Appellant.

FILED
MAR 28 1997
CLERK SUPREME COURT

Appeal from the Iowa District Court for Jasper County, Jerrold W. Jordan, Judge.

Conservator appeals from judgment entered against him in the amount of $10,557.97 for improperly accounting or disbursing monies of the ward. **AFFIRMED.**

Lee M. Walker of Walker, Knopf & Billingsley, Newton, for appellant.

Dorothy K. Goodman of Barnhill & Goodman, P.C., West Des Moines, for appellee.

Considered by Habhab, C.J., Huitink, and Vogel, JJ.

PER CURIAM

Edward Smith, conservator, appeals from the district court order entering judgment against him for $10,557.97 for improperly accounting or disbursing monies of the ward. He asserts the court erred in failing to determine that (1) the ward was required to disaffirm a contract entered into prior to the conservatorship, and (2) the ward was estopped from objecting to a payment of a funeral bill contained in the conservator's final report because the objection was made over one year after the bill was paid. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

The ward, Amy Smith, born September 15, 1976, is the daughter of the conservator and Deborah Penning. Edward and Deborah divorced and each remarried. Deborah committed suicide on November 13, 1993. On November 25, 1993, Amy signed an "Assignment of Proceeds of Insurance" to a funeral home to cover her mother's funeral expenses. The proceeds were to come from Deborah's life insurance policy of which Amy was the beneficiary. Edward co-signed the assignment a few days later. The amount of the funeral expenses did not appear on the assignment prior to the time either signed it.

In April 1994, a voluntary conservatorship was opened, apparently to receive the insurance proceeds ($11,149) mentioned above. Edward was appointed conservator. He did not file an initial inventory as required by Iowa Code section 633.670(1)(a) (1993). On July 29, 1994, without court approval, Edward paid the

funeral bill from the conservatorship assets in the amount of $8,772.10. Amy reached majority on September 15, 1994.

On September 11, 1995, Amy filed an application for accounting and termination of the conservatorship. She filed objections to Edward's subsequently submitted accounting, arguing he did not gain approval to pay the funeral bill and did not account for $1149 "cash dispersement."

At the hearing on Amy's objections, Amy testified no one told her she was not responsible for the funeral expenses either before signing the assignment or prior to paying the funeral home bill. She stated she told Edward prior to paying the bill that she wanted Steve Penning, Deborah's husband, to pay one-half of the bill. Edward testified he agreed to allow Amy to pay the funeral bill because it was "a good way to get closure" and she "could do something for her mother." He testified he explained to Amy that she was not responsible for the bill, and he believed it was her desire to pay the bill.

The district court ruled Edward failed (1) to obtain court approval before paying the funeral expenses, (2) to file an initial report, and (3) to account for some proceeds. It determined Edward properly accounted for $591.03 of the total insurance proceeds. It entered judgment against Edward for $10,557.97. Edward appeals.

A hearing on objections to a fiduciary's final report is an equitable proceeding. Iowa Code § 633.33 (1993); *In re Estate of Roehlke*, 231 N.W.2d 26, 27 (Iowa 1975).

Our review is thus de novo. Iowa R. App. P. 4. We give weight to the findings of the trial court, but we are not bound by them. Iowa R. App. P. 14(f)(7).

I. Edward asserts Amy was required to disaffirm the contract with the funeral home. Edward cites no authority supporting this claim. Failure to cite supporting authority may be deemed a waiver of the issue. Iowa R. App. P. 14(a)(3). Edward, as conservator, had the authority under section 633.650 to disaffirm the contract on behalf of Amy. He did not do so. Moreover, he did not obtain court approval prior to paying the funeral home bill. *See* Iowa Code § 633.647(5).

"[T]he law places very specific and rigid requirements on fiduciaries." *In re Conservatorship of Rininger*, 500 N.W.2d 47, 51 (Iowa 1993). A breach of those fiduciary duties subjects a conservator to personal liability. *See id;* Iowa Code § 633.633A. We agree with the district court that Edward breached his fiduciary duties.

II. Edward also argues Amy could have made a claim against the funeral home rather than against the conservatorship. He contends, because Amy did not object to the payment of the funeral expenses until over one year later, she is estopped from objecting to the final report. Edward did not raise this issue below and is thus precluded from raising the issue on appeal. *See Nepstad Custom Homes Co. v. Krull*, 527 N.W.2d 402, 405 (Iowa App. 1994).

Finding no reason to disturb the trial court's ruling, the judgment is affirmed.

AFFIRMED.