IN THE COURT OF APPEALS OF IOWA

No. 22-1671
Filed March 6, 2024

IN THE MATTER OF THE ESTATE OF LORRAINE S. SCHULTZ, Deceased.

KATRINA MORELAND, KEYLI KIEFER, and KRISTA NEBENDAHL,
Appellants.

Appeal from the Iowa District Court for Allamakee County, Richard D. Stochl, Judge.

Family members of the deceased appeal a ruling on their objections to an executor's final report. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED WITH DIRECTIONS.**

Matthew J. Hemphill of Bergkamp, Hemphill & McClure, P.C., Adel, for appellants.

Max E. Kirk of Ball, Kirk & Holm, P.C., Waterloo, and C. Kevin McCrindle of Law Offices of C. Kevin McCrindle, Waterloo, for appellees.

Considered by Tabor, P.J., Buller, J., and Carr, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2024).

BULLER, Judge.

This appeal requires us to determine what happens when beneficiaries under a will enter into a Family Settlement Agreement (FSA) before their interests in the estate have vested and when two of those beneficiaries die before the will is admitted to probate. Because we find these events rendered the FSA invalid, but the district court did not rule on or find facts regarding validity of the will that preceded the FSA, we reverse and remand for further proceedings on that question. On challenges to the executor's conduct, we find one claim is not properly before us and affirm the other despite a thin record.

I. Background Facts and Proceedings

Lorraine Schultz and her husband Cloy held title to hundreds of acres of farmland in Clayton, Allamakee, and Fayette Counties. Some of the land was in Cloy's name and the rest in Lorraine's. As of 2020, Lorraine's half of the real property was valued at nearly $5.4 million.

In 1998, Lorraine and Cloy adopted mirror-image wills that provided the surviving spouse a life estate in the deceased spouse's half of the farm property and divided the ownership of the property evenly between their four children—Jacquelyn, Annette, Debbie, and Blaine—upon the surviving spouse's death.

Cloy was the decision-maker regarding finances and property-related decisions; Lorraine was not involved in any farming or investment decisions or paying family bills. Blaine farmed the property with Cloy while Cloy was alive and on his own after Cloy died. The record gives varying dates for Cloy's death, but there is no question he died before 2003.

In July 2003, Lorraine—accompanied by Blaine—visited her attorney and changed her will. Lorraine's 2003 will divided the property into named farms and distributed them among her four children: four farms totaling 420 acres to Blaine; three farms totaling 151 acres for Jacquelyn, Annette, and Debbie to share equally; and one farm of 230 acres to be divided equally between all four children along with all of her other property. That division amounted to more than four times as many acres being given to Blaine compared to the other children: 477.5 acres total to Blaine, 107.83 acres to Jacquelyn, 107.83 acres to Annette, and 107.83 acres to Debbie. The 2003 will listed Blaine and Annette to be appointed executors of the estate. Because Blaine accompanied Lorraine to the attorney's office, he was aware of the 2003 will; Jacquelyn, Annette, and Debbie were not. Blaine and Debbie were also named Lorraine's attorneys in fact, though Debbie did not know this at the time. Blaine told Annette she no longer needed to help Lorraine with her finances and bills. Around the same time, Lorraine established a sixteen-year farm lease for Blaine with rent set at $70 per acre per year.

When Jacquelyn, Annette, and Debbie eventually learned of the 2003 will in the summer of 2014, they, Blaine, and Lorraine met with an attorney to restore the 1998 will. The attorney consulted Lorraine privately and felt that she did not have testamentary capacity and thus could not change the 2003 will. The attorney suggested a family settlement agreement as an alternative, and Lorraine's four children entered into the July 2014 FSA that divided the farm property to be inherited from Lorraine equally among them. The FSA contained only the following language:

> We the undersigned children of Cloy and Lorraine Schultz, being all of the children of said parents, hereby mutually agree that upon the death of our mother, Lorraine Schultz, we will regardless of the terms of her will, execute all necessary documents to see that the property she has at the time of her passing is divided equally among us.

Lorraine was present for the drafting of the FSA but did not sign it.

Two of Lorraine's children died before her. Debbie died in 2015 and was survived by two children: Jason and Joshua. Blaine died testate in December 2017. He was survived by his spouse Sherry and his three children: Katrina Moreland, Keyli Kiefer, and Krista Nebendahl (collectively, the "Objectors") survived him. After Blaine's death, Sherry continued to rent the farmland through 2019, when she terminated the sixteen-year lease one year early.

Lorraine died testate in January 2019. Annette petitioned for the probate of Lorraine's will, and the district court admitted the will and appointed Annette executor. The estate's attorney filed the FSA with the district court the same day. Each beneficiary—including each of the Objectors—was mailed "a copy of decedent's Last Will and Testament, Family Settlement Agreement and Notice of Appointment of Probate of Will, of Appointment of Executor, and Notice to Creditors."

After Lorraine's death, Annette began renting the farmland: 607 acres for $100 per acre per year for three years. She signed the lease as both tenant and landlord. Her husband and son also signed the lease as tenants. While renting, Annette and her family made improvements to the property by working on the soil, waterways, terraces, buildings, and fence lines.

Annette, acting as executor, filed her amended final report in April 2021. The amended final report listed Jacquelyn, Jason, Joshua, the Objectors, and

herself as the heirs and beneficiaries of the estate. Annette, as executor, divided the estate's property, giving 25% to Jacquelyn, 25% to the executor, 12.5% to Jason, 12.5% to Joshua, 8.34% to Krista, 8.34% to Keyli, and 8.34% to Katrina. The division amounted to about 25% for each of Cloy and Lorraine's four children or the child's beneficiaries, as agreed in the FSA.

The Objectors (as their designation suggests) objected to the final report and proposed distribution, challenging the validity of the FSA. Annette, as executor, later filed a second amended final report that contained the same heirs and beneficiaries and distribution of the estate. The Objectors objected to the second amended final report for the same reasons and lodged a supplemental objection to Annette's lease of the farmland as impermissible self-dealing.

Annette, as executor, moved to dismiss the objections to the final report as untimely and improperly filed. After a hearing, the district court denied that motion. At trial on the distribution of the estate, the parties discussed the FSA, the estate accounting, and the proposed distribution of the estate. Annette testified she was unable to account for the rent paid in 2020. And when asked about rental deposits, Annette said: "You know, I can't answer that right now. I did—no, I did not bring that with me." When pressed about collecting the rent, she said that it was "either in the Estate or in the Cloy Schultz [Partnership]. We paid the Estate." Annette did not dispute that her husband was paid $50,000 from the estate for work to improve the farmland.

The attorney who prepared the 2003 will gave inconsistent testimony on his perception of Lorraine's mental capacity: he denied seeing any undue influence at the meeting to prepare the 2003 will but also admitted he did not investigate

whether any influence was being exerted. The attorney also testified that, if the accounting provided did not contain sufficient payments for 2020 rent, "then, yes, there would still be money left from 2020." Annette's counsel requested that she "be given . . . no more than thirty days to provide an accounting, complete with checks and records of every type, to the court and counsel" on whether the 2020 rent was paid. The district court responded on the record, "I'm not making a finding at this time that there's been any wrongdoing, that the rent wasn't paid; I'm not making a finding that the rent was paid. I'm simply going to direct that the accounting be clarified so it's clear to everyone, including me, what happened."

After trial, the district court found Lorraine "only changed her will in 2003 because of the improper influence of Blaine." It ruled "Blaine was competent and knew what he was doing when he entered into the [FSA] in 2014. The agreement is valid and binding upon his heirs." The district court denied the Objectors' request to require distribution pursuant to the 2003 will, and instead distributed the estate according to the FSA. As to the self-dealing claim, the district court ordered that "Annette shall modify the accounting to clarify the payment of rent and how those proceeds were distributed" and retroactively approved Annette's rental of the farmland and payment to her husband for work, finding the rent "appropriate" and the work on the farm "legitimate."

The Objectors filed a post-trial motion, which the district court found "essentially restate[d] the position that they took at trial." The district denied the motion, observing that Blaine "[c]orrecting a wrong" in the 2003 will was "proper consideration" to support the FSA. The Objectors appeal.

II. Standard of Review

Our review is de novo. *See* Iowa Code § 633.33 (2019) ("[A]ll other matters triable in probate shall be tried by the probate court as a proceeding in equity."); Iowa R. App. P. 6.907 ("Review in equity cases shall be de novo."); *In re Est. of Lamb*, 584 N.W.2d 719, 722 (Iowa Ct. App.1998). "While we give weight to the trial court's findings of fact, we are not bound by them." *In re Est. of Rogers*, 473 N.W.2d 36, 39 (Iowa 1991).

III. Discussion

The Objectors claim four errors in the district court's distribution of the estate—two related to the FSA and two to the executor's conduct: they argue (1) the FSA is invalid because the Objectors were not parties to it; (2) the FSA lacked consideration; (3) Annette, as executor, improperly accounted for, recovered, and spent estate funds; and (4) Annette, as executor, participated in impermissible self-dealing. We begin with the objections to the FSA, finding the FSA's validity disposes of the consideration claim, before addressing the challenges to executor conduct.

A. Objections to the FSA

Beneficiaries under an Iowa will may enter into an FSA "to disregard the instrument and have the estate distributed as intestate or in any other manner they see proper." *In re Swanson's Est.*, 31 N.W.2d 385, 389 (Iowa 1948). In essence, an FSA allows beneficiaries to a will to "divide up the property as they see fit," regardless of the testator's intent. *In re Est. of Amlie*, No. 09-0449, 2010 WL 447061, at *3 (Iowa Ct. App. Feb. 10, 2010).

But FSAs are only binding when they are signed by beneficiaries. FSAs cannot bind hypothetical or contingent beneficiaries, who take an interest only after the original beneficiaries disclaim their interests or die. *See Cochran v. Zachery*, 115 N.W. 486, 487 (Iowa 1908); *see also In re Est. of Erland*, No. 05-0978, 2006 WL 3436319, at *3 (Iowa Ct. App. Nov. 30, 2006) (finding the objectors "were not 'beneficiaries under a will' and, therefore they were not, nor should they have been, party to the settlement agreement"). This is because the renunciation of an interest only "takes effect as of [the] testator's death." *Seeley v. Seeley*, 45 N.W.2d 881, 884 (Iowa 1951). As a practical matter, this means that beneficiaries may only agree to an alternative distribution after the will is admitted to probate and they take title to any interest they have under the will. *Id.* at 885 ("In legal effect the contracting parties convey title *from themselves* . . . .").

Independent of limits on beneficiaries, an FSA also must be joined by all of the heirs of an estate to be valid. *Id.* at 884 (finding "*if they are also all the heirs*, they may by contract direct distribution of assets and devolution of title contrary both to the provisions of the will and the laws of descent" (emphasis added)).

Applying those principles to this case, we find two problems with the district court's ruling. First, because Lorraine was still alive when the parties signed the FSA, their interests had not yet vested. *See Palmer v. Evans*, 124 N.W.2d 856, 862 (Iowa 1963) ("Interests of beneficiaries vest upon the death of decedent."). Second, Blaine and Debbie—who were both beneficiaries under the 2003 will—died before Lorraine. As a result, Blaine and Debbie's expectancy interests passed to their respective children (the Objectors, Jason, and Joshua) before the court admitted Lorraine's will to probate, and the children were not

parties to the FSA. *See* Iowa Code § 633.273(1) ("If a devisee dies before the testator, leaving issue who survive the testator, the devisee's issue who survive the testator shall inherit the property devised to the devisee per stirpes . . . ."). Because Blaine and Debbie's expectancy interests passed to their children, the FSA was not signed by all of the beneficiaries of the estate at the time it was admitted to probate. *See Swanson's Est.*, 31 N.W. at 390. For these two reasons, the FSA was not valid and the estate should not have been distributed according to its provisions. The district court's ruling otherwise was in error and we reverse. We note this reversal obviates any need to decide whether the FSA was supported by consideration.

Ordinarily, we would turn to the 2003 will and order the proper distribution of assets in our opinion. But the district court did not expressly rule on the will's validity or any issues relating to timeliness, presumably because finding the FSA valid rendered the 2003 will an academic question.

Because we reverse on the FSA's validity, the contest to the 2003 will is a question that needs to be answered. We remand for the district court to find facts and rule on that question and related matters in the first instance. *See Papillon v. Jones*, 892 N.W.2d 763, 773 (Iowa 2017).

B. Objections to Executor's Conduct

In their challenge to Annette's conduct as executor, the Objectors first focus on the accounting. But rather than resolve the accounting claim, the district court directed Annette to "amend" or "clarify" the accounting, expecting subsequent action by Annette before the court ruled. "A ruling is not final when the trial court intends to act further on the case before signifying its final adjudication of the

issues." *River Excursions, Inc. v. City of Davenport*, 359 N.W.2d 475, 477 (Iowa 1984). We find the district court intended further action, which renders the Objectors' challenge on accounting interlocutory, unripe, and not properly before us. We also note that, while the Objectors filed an Iowa Rule of Civil Procedure 1.904(2) motion to enlarge and amend, that motion did not seek a ruling on the accounting issue—nor did any other filing. An appellate ruling on the accounting will have to wait until appeal from a subsequent final order, if ever.

As to the Objectors' second challenge, concerning Annette's alleged self-dealing, we have a thin record. It seems undisputed that Annette's rental of farmland to herself and her family, as well as payment to her husband for working the land, were self-dealing transactions that required court approval. *See* Iowa Code § 633.155 (requiring court-approval for self-dealing). And the district court retroactively approved the rental agreement and the payment for labor, reasoning:

> The court further finds the rental of the land at $100.00 per acre by Annette and her family was appropriate. While she should have gotten court approval prior to paying her husband for work he did on the land, the work was legitimate and the payment is hereby retroactively approved.

Though not the most detailed analysis, we conclude the district court's terse reasoning is sufficient to permit appellate review. *See Lamasters v. State*, 821 N.W.2d 856, 864 (Iowa 2012) ("If the court's ruling indicates that the court *considered* the issue and necessarily ruled on it, even if the court's reasoning is 'incomplete or sparse,' the issue has been preserved." (citations omitted)); *Cf. Brooks v. Holtz*, 661 N.W.2d 526, 529 (Iowa 2003) ("'[A] meaningful record for appellate review' exists when the court does not have to speculate . . . ." (citation omitted)).

Annette bore the burden to prove actions she undertook as executor were done with fair dealing. *See In re Est. of Snapp*, 502 N.W.2d 29, 32 (Iowa Ct. App. 1993); *In re Est. of Bruene*, 350 N.W.2d 209, 214 (Iowa Ct. App. 1984). The district court's finding that the rent was "appropriate" implicitly credited Annette's testimony that the rent was fair given the state of the property and that Annette and her husband bore unusual expenses to improve or maintain the land. And the district court's finding that the work on the land was "legitimate" implicitly credited two exhibits summarizing the work done by Annette's husband and testimony explaining the same. Although thin, there is enough here to support the district court's findings on self-dealing, and we affirm that portion of the ruling.

IV. Disposition

The FSA was invalid because it did not include all beneficiaries as of probate. We reverse the portion of the district court ruling enforcing the FSA and remand with directions to hold further proceedings on the validity of Lorraine's 2003 will. We issue no ruling on the accounting issue, finding it not properly before us. And we affirm the portion of the ruling addressing self-dealing.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED WITH DIRECTIONS.