

IN THE COURT OF APPEALS OF IOWA

No. 0-184 / 09-1339
Filed June 16, 2010

CRAIG R. CLASSON,
Plaintiff-Appellant,

vs.

**DIANE CLASSON and
DONNA ARENDS,**
Defendants-Appellees.

Appeal from the Iowa District Court for Franklin County, John S. Mackey,
Judge.

Plaintiff appeals the district court's ruling granting a motion to dismiss his
petition to set aside a will. **REVERSED AND REMANDED.**

David R. Johnson of Brinton, Bordwell & Johnson, Clarion, for appellant.

Joel Yunek of Yunek Law Firm, P.L.C., Mason City, for appellee Diane
Classon.

Thomas J. Cahill of Cahill Law Offices, Nevada, for appellee Donna
Arends.

Considered by Vogel, P.J., Eisenhauer, J., and Miller, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

MILLER, S.J.**I. Background Facts & Proceedings**

Ralph Classon is the deceased father of Craig Classon, Diane Classon, and Donna Arends. In a will dated December 30, 2005, Ralph directed that the expenses of his last illness, funeral, and burial be paid, and left the remainder of his estate “in equal shares to my children.” Ralph died on July 19, 2008, with no surviving spouse.

Craig filed a petition for probate of the will on July 31, 2008, in the Iowa District Court for Franklin County. Craig was appointed executor of the estate of his father, having been nominated as such in the will. The “Notice of Probate of Will, of Appointment of Executor and Notice to Creditors” was published on August 27 and September 3, 2008, and was mailed to the named beneficiaries (who were also the decedent’s only heirs at law) on September 18, 2008.

On December 17, 2008, Craig filed a petition to set aside the will of Ralph Classon. He filed it, as he had filed the probate of Ralph’s will, in the Iowa District Court for Franklin County. Craig captioned his petition, “Craig R. Classon, Plaintiff, vs. Diane Classon, and Donna Arends, defendants.” He did not file the petition in the pending probate proceeding, which was designated, “In the Matter of the Estate of Ralph Classon” and had been assigned the probate case number “ESPR500325.” When he filed his petition, Craig provided a cover sheet indicating the petition was an “Other civil action.” See Iowa R. Civ. P. 1.301(2) (stating that such a cover sheet “must be completed and accompany every civil petition *except in small claims, probate, and mental health*

commitment actions”) (emphasis added)). Craig’s petition was then assigned a new and separate civil case number, “CVCV500440.”

Diane and Donna were both served with original notice of Craig’s action to set aside the will. In her answer to Craig’s petition, Donna asserted that a temporary executor should be appointed. In her answer, Diane asserted that the petition should be transferred to the probate court. Diane filed an application in the probate proceeding seeking to have Craig removed as the executor on the ground that his position as executor conflicted with his action to set aside the will. Craig did not object to being removed as the executor. On May 26, 2009, Craig was removed as the executor and First Citizens National Bank of Mason City was appointed.

In the action to set aside the will, Diane and Donna had served a motion to dismiss on May 13, 2009. In it they asserted that the action had been filed improperly as a separate civil action, and further asserted that the executor of Ralph’s estate was the real party in interest and the action should have been brought against the executor. By way of response, Craig noted that under Iowa Code section 633.312 (2007) “all known interested parties” should be named as defendants if they were not joined with plaintiffs. He claimed his petition was timely filed and tolled the statute of limitations.

At the hearing on the motion to dismiss, Diane’s counsel suggested “the easy fix for a court and for [counsel for Craig] as a practical matter is just to simply ask that the executor be substituted as a defendant” Craig’s counsel stated, “we can file our motion for leave or I can make my motion formally right

now that we would move for leave of court to amend the petition to name First Citizens Bank as a defendant in the will contest proceeding.”

The district court granted the motion to dismiss. The court found that Craig’s failure to name the successor executor as defendant within the applicable time period of section 633.309 (providing that an action to contest a will must be commenced within the later of four months from the date of second publication of notice of admission of the will to probate or one month following mailing of the notice to heirs of the decedent and devisees under the will) was fatal to his claim. The court determined that even if the petition were amended to name the successor executor as a defendant, the amendment would not meet the relation-back requirements of Iowa Rule of Civil Procedure 1.402(5). The court concluded that Craig’s claim was barred because he “has failed to timely bring his will contest action against the only entity charged with the duty of sustaining the validity of decedent’s last will and testament.”

Craig filed a motion to enlarge or amend pursuant to rule 1.904(2). The court denied the motion. Craig appeals.

II. Standard of Review

A district court’s ruling granting a motion to dismiss is reviewed for the correction of errors at law. Iowa R. App. P. 6.907; *Ackerman v. American Cyanamid Co.*, 586 N.W.2d 208, 211 (Iowa 1998).

III. Issue(s) on Appeal

Craig claims the district court erred in dismissing his petition on the basis that he failed to name a successor executor as a defendant within the time

allowed by section 633.309 for commencing a will contest.¹ Craig also claims the court erred in denying his motion, made at the time of the hearing on the motion to dismiss, to amend his petition to name the bank, which had earlier been appointed as successor executor, as a defendant.

Several statutes have a bearing on the issues presented. Iowa Code section 633.308 provides, in relevant part:

Any interested person may petition to set aside the probate of the will by filing a written petition in the probate proceedings.

(Emphasis added). Section 633.309 states:

An action to . . . set aside the probate of a will *must be commenced in the court in which the will was admitted to probate* within the later to occur of four months from the date of the second publication of notice of admission of the will to probate or one month following the mailing of the notice to all heirs of the decedent and devisees under the will

(Emphasis added). Section 633.311 provides:

An action . . . to set aside a will, is triable in the probate court as an action at law, and the rules of civil procedure governing law actions . . . shall be applicable thereto.

Section 633.312 requires:

In all actions to . . . set aside a will, *all known interested parties* who have not joined with the contestants as plaintiffs in the action, *shall be joined* with proponents as defendants. When additional *interested parties* become known, *the court shall order them brought in* as party defendants.

¹ He in fact claims the court erred in dismissing on the basis he failed to name “the successor executor as the *sole* defendant” within that time limit. (Emphasis added). We do not, however, read the appellees’ arguments in the district court, or that court’s ruling, quite so narrowly. We instead read the appellees’ arguments as raising claims, and the court’s ruling as holding, that because of Craig’s readily-apparent conflict of interest, in order for his action to contest Ralph’s will to be timely it was necessary that some person other than Craig have been appointed as executor and named as a defendant within the time limit of section 633.309.

(Emphasis added).

Diane and Donna argue that for various reasons the district court's ruling was correct. We may affirm the court's ruling on grounds not relied on by it if the grounds were presented to it. *Fennelly v. A-1 Machine & Tool Co.*, 728 N.W.2d 163, 177 (Iowa 2006). We therefore consider Diane's and Donna's arguments in support of the court's ruling.

Diane and Donna contend that Craig's petition was properly dismissed because it was filed as a separate law action rather than being filed in the then-pending probate proceedings as directed by section 633.308. The district court rejected this contention.

It appears that at the time of his death Ralph was domiciled in and a resident of Franklin County. The Iowa District Court for Franklin County thus had original and exclusive jurisdiction to administer his estate. See Iowa Code § 633.12. Ralph's will was properly probated in Franklin County, and Craig filed his action to set aside his will in the same county, albeit improperly filing it as an action separate from the probate proceedings and resulting in it being assigned a different case number in the law docket. Iowa has only one court of general jurisdiction, the district court, which has separate dockets for civil and probate cases. *Woodbury County Attorney v. Iowa Dist. Ct.*, 448 N.W.2d 20, 21 (Iowa 1989).

[I]f a case is proceeding under the wrong docket one or both of the parties must move that it be transferred to the proper docket, or the court must transfer it, otherwise the case may proceed to conclusion where it is.

In re Estate of Young, 273 N.W.2d 388, 392 (Iowa 1978).

If a plaintiff errs in the kind of proceeding chosen, the action is not subject to abatement or dismissal but may be changed to the proper proceedings and transferred to the proper docket. Iowa Code § 611.7. We conclude, as the district court did, that Craig's improper filing, as a separate law action, of his action to set aside probate of Ralph's will did not subject it to dismissal.

Diane and Donna claim the district court properly dismissed Craig's petition because section 633.420 requires that all claims filed against an estate "shall be entitled in the name of the claimant *against the personal representative as such, naming the estate,*" (emphasis added), and that Craig's failure to name Ralph's executor as a defendant and to name the estate subjected the action to dismissal.² Section 633.420 is, however, included in Part 7 of Division VII of the Iowa Probate Code, Iowa Code chapter 633. Part 7 deals with "Claims Against Decedent's Estate." In this context, "[t]he word 'claim' generally refers to debts or demands against the decedent which might have been enforced against him during his lifetime by personal actions for the recovery of a sum of money." *In re Estate of Weidman*, 476 N.W.2d 357, 365 (Iowa 1991). We conclude that section 633.420's pleading requirements for a claim against a decedent's estate have no relationship to or bearing on an action to set aside a will.

Diane and Donna asserted in the district court, and the court held, that if after the time for commencing an action to set aside Ralph's will had expired, the executor of his estate were then to be named as a defendant to the action the amendment would not meet the relation-back requirements of Iowa Rule of Civil

² We have serious doubts as to whether this ground for dismissal was presented to the district court, but choose to nevertheless briefly address it.

Procedure 1.402(5) and thus could not satisfy Iowa Code section 633.309's four-month limitation for commencing such an action. Implicit within the court's ruling is a holding that the executor is a necessary defendant in an action to set aside probate of a will and a holding that the naming of the executor as a defendant must occur within the four-month period of limitation or meet the relation-back requirements of rule 1.402(5). Craig claims the court erred in holding that the executor could not be added after the four-month period. We agree and conclude the court erred in determining that dismissal was required.

Iowa Code section 633.308 provides that "[a]ny interested person" may petition to set aside the probate of a will. The Iowa Probate Code does not define the term "interested person." Our supreme court has defined the term for purposes of section 633.122 as any person whose interest in the assets of an estate may be diminished by acts of a fiduciary.³ *In re Estate of Boyd*, 634 N.W.2d 630, 638-39 (Iowa 2001). An executor has no personal interest in the assets of an estate, and we conclude an executor is not an "interested person" within that term as used in section 633.308.

Section 633.312, however, requires that all "interested parties" who have not joined as contestants seeking to set aside the probate of a will be joined as defendants or later brought in as defendants when they become known. We conclude that the term "interested parties" is arguably broader than the term "interested persons," and conclude the term "interested parties" arguably includes the executor of an estate. On appeal Craig does not appear to

³ We believe that for purposes of section 633.308 an "interested person" similarly includes any person whose interest in assets may be diminished, but also includes any person whose interest in assets may be increased.

challenge the district court's holding, implicit in its dismissal of his action to set aside probate of the will, that the executor of Ralph's estate was a necessary party defendant in that action. We will therefore assume that the executor was a necessary party defendant.

Iowa Code section 633.312 evinces an intent that all who may be affected by the outcome of an action to set aside probate of a will be made parties to such an action. The question becomes when they can or must be made parties.

The case of *In re Ditz's Estate*, 255 Iowa 1272, 1279, 125 N.W.2d 814, 818 (1964), involved facts arising before the adoption of our present probate code. At that time our rules of civil procedure provided that a civil action was commenced by serving the defendant with an original notice. Iowa R. Civ. P. 48 (1962). The rules further provided that for the purpose of determining whether an action was commenced within an applicable statute of limitations, delivery of the original notice to the sheriff of the proper county with the intent that it be served immediately also constituted commencement of the action. Iowa R. Civ. P. 49. Within the statute of limitations certain heirs of the decedent Ditz filed an action to set aside the probate of Ditz's will. *Ditz*, 255 Iowa at 1274, 125 N.W.2d at 816. They named certain heirs and some beneficiaries under the will as defendants, but did not name seven other beneficiaries as defendants. *Id.* After the statute of limitations had expired, pursuant to court order the plaintiffs amended their petition to name the additional, earlier-omitted defendants. *Id.* Certain defendants, who had been served before the statute of limitations expired, sought dismissal, contending in part that the action was barred by the statute of

limitations. *Id.* In relevant part, the trial court ruled that the action to set aside the will had not been commenced within the statute of limitations, and dismissed the action. *Id.* at 1274-75, 125 N.W.2d at 816. In reversing and remanding, our supreme court concluded that when an interested person

institutes an action by filing his petition and serving any other interested person within the . . . period of limitation, the running of the statute as to all other interested parties is tolled and they may be added later with the same effect as though timely action was commenced against all. Thus, when the other seven persons were served as ordered by the court herein, jurisdiction of both the persons and the subject matter was obtained by the trial court, and the motion to dismiss on this ground should have been denied.

Id. at 1279-80, 125 N.W.2d at 819.

At the time Craig brought the present action, our rules provided that a civil action is commenced by filing a petition with the court. Iowa R. Civ. P. 1.301(1) (2008). Craig's action to set aside the probate of Ralph's will was clearly timely filed within the later of the times prescribed in section 633.309. It clearly named as defendants two interested persons, Diane and Donna. We conclude that Craig's action was timely commenced within the applicable statute of limitations.

Assuming that the executor of Ralph's estate was a necessary party defendant, we do note that Craig requested or offered to bring the executor in as a party defendant, doing so however after the expiration of the time for commencing the action. The district court held that Craig's "failure to name the successor executor as defendant and proponent of the will within the applicable time period is jurisdictionally fatal." The court further implicitly, if not expressly, denied Craig's request or offer to bring the executor in as a defendant, stating that Craig "cannot bear his burden of satisfying the relation-back requirement" of

Iowa Rule of Civil Procedure 1.402(5). The question that remains is whether in an action to set aside probate of a will “an interested party” can be brought in as a defendant after the expiration of the time for commencing the action, and whether rule 1.402(5)’s relation-back requirements must be satisfied in order to do so.

Iowa Code section 633.34 provides that “[a]ll actions triable in probate shall be governed by the rules of civil procedure, *except as provided otherwise in this probate code.*” (Emphasis added). As previously noted, Iowa Code section 633.312 evinces an intent that all “interested parties” be made parties to an action to set aside probate of a will. *Ditz* holds that the timely commencement of the action against any interested persons tolls the running of the statute of limitations as to all other interested parties and they may be added later with the same effect as if the action had been timely commenced against all. 255 Iowa at 1279-80, 125 N.W.2d at 819. Neither *Ditz* nor section 633.312 sets a time limit for bringing in an interested party. We conclude that in view of section 633.309’s short time limits for commencing an action to set aside the probate of a will, section 633.312’s requirement that all interested parties be brought in as party defendants, and section 633.312’s lack of any time limit for doing so, additional interested parties can be brought in as long as the probate proceeding is open and the action to set aside probate of the will is pending. Stated in somewhat different terms, we conclude that pursuant to the “except as provided otherwise in this probate code” provision of section 633.34, rule of civil procedure

1.402(5)'s relation-back limitations do not apply to bringing in additional parties defendant pursuant to section 633.312.

Section 633.312 provides that in an action to set aside probate of a will all known interested parties who have not joined as contestants shall be joined as defendants, and when additional interested parties who are not parties to the action become known, "the court shall order them brought in as party defendants." We conclude that the district court should have ordered Ralph's executor brought in as a party defendant, whether by sustaining Craig's request or offer to do so or otherwise. We further conclude that the court therefore erred in dismissing Craig's action to set aside probate of Ralph's will. We reverse the ruling of the district court and remand for further appropriate proceedings.

REVERSED AND REMANDED.