

IN THE COURT OF APPEALS OF IOWA

No. 0-384 / 09-1105
Filed August 11, 2010

**IN THE MATTER OF THE ESTATE
OF RALPH ROETHLER, Deceased,**

R. STEPHEN HANKENS,
Plaintiff-Appellee/Cross-Appellant,

KENT LEWIS and BECKY LEWIS,
Plaintiffs-Appellees/Cross-Appellees,

vs.

**ANGELA M. KUEHN, CHERYL L. UPTON,
JACQUELYN F. BETSWORTH, DANIEL W.
ROETHLER, MARY ANN JAMES, JAMES F.
ROETHLER, DONALD A. ROETHLER,
CONSTANCE L. DUKE, GERALD E.
ROETHLER, KATHLEEN S. GOOD, JOHN M.
ROETHLER, DANIEL LEE HOMAN and
FRANK E. HOMAN,**
Beneficiaries-Appellants/Cross-Appellees.

Appeal from the Iowa District Court for Cherokee County, Nancy L.
Whittenburg, Judge.

The beneficiaries of the estate of Ralph Roethler and an intervenor appeal
from the district court orders reopening the estate and construing the will.

REVERSED.

George W. Wittgraf of Sayre, Wittgraf & Meloy, Cherokee, for appellants/cross-appellees.

Steven T. Roth of Roth Law Office, Storm Lake, for appellees/cross-appellants.

Erin E. McCullough of Law Offices of Erin E. McCullough, Lake View, for appellees/cross-appellees.

Considered by Sackett, C.J., and Eisenhower and Mansfield, JJ.

EISENHAUER, J.

This is an appeal of the district court's orders reopening the estate of Ralph Roethler and construing his will to grant Kent and Becky Lewis the option to purchase eighty acres of farm real estate for the price it was appraised at in 1994. We conclude the district court erred in reopening the estate and in allowing the Lewises to purchase the farm real estate at its 1994 appraised price.

I. Background Facts and Proceedings. Ralph Roethler died on July 3, 1999. His will was admitted to probate on August 10, 1999. It provides in pertinent part:

II. I give, devise and bequeath to my spouse, Marjorie Roethler, a life estate in all real estate I may own at the time of my death upon the condition that she survives me.

III. Subject to a life estate in my spouse, Marjorie Roethler, I give, devise, and bequeath the remaining interest in the real estate I own at the time of my death to the following: Angela Kuehn, Margaret Homan, Cheryll Upton, Jacqueline Betsworth, Daniel Roethler, James Roethler, John Roethler, Donald Roethler, Jerald Roethler, Mary Anne James, Connie Duke, and Kathy Good, share and share alike.

....

V. I herein give Kent Lewis and Becky Lewis the first right of purchase to the following described real estate, to-wit:

80 Acres in Diamond Township, Section One; at the appraised value in the Estate. This right to purchase shall be given them for a period of four months from my date of death. Notice of said right to purchase shall be filed in my Estate in writing.

The eighty-acre parcel of farm real estate listed in section V is the subject of this dispute. At the time of Ralph's death, it was valued at \$140,600.

Notice of the probate proceedings was sent to the heirs listed in section III, but not to the Lewises. Notice was published on July 26, 1999, and August 2, 1999. Marjorie, executor of Ralph's estate, filed the final report on October 26,

1999, and the court entered a final decree closing the estate the following month. Title of the farm was transferred to Marjorie for life, with the remainder to the beneficiaries named in section III.

Marjorie died in 2008. During the probate of her estate, the heirs entered into a contract to sell the farm real estate to Neal and Kathleen Pearson for \$408,000. When a title opinion revealed the Lewises did not receive notice of the right to purchase option, they were sent a letter asking them to waive their rights to the farm due to the proposed sale. This was the first the Lewises learned of their rights under Ralph's will.

On June 23, 2008, the Lewises filed a petition to reopen Ralph's estate. The residual beneficiaries resisted. Following a hearing, the district court entered its order, reopening the estate. Thereafter, the Lewises filed a pleading captioned, "Notice of Intent – First Right to Purchase," which stated, "We hereby accept and take the devise as bequeathed to use [sic] from Ralph Roethler." Stephen Hankens, who probated Ralph's estate and was named by the Lewises as a defendant in a separate negligence cause of action, intervened in this matter.

A trial was held on May 27, 2009. On June 29, 2009, the district court entered its ruling and order on construction of the last will and testament of Ralph Roethler. The court concluded Ralph's will gave the Lewises an option to purchase the farm real estate at the appraised value, not subject to any election by Marjorie to sell or not sell. The residual beneficiaries appeal and Hankens

cross-appeals from that ruling. The residual beneficiaries also appeal the district court order reopening the estate.

II. Scope and Standard of Review. Probate matters are tried in equity and our review is de novo. *In re Estate of Gearhart*, 584 N.W.2d 327, 329 (Iowa 1998). We will give weight to the trial court's findings of fact, especially those involving the credibility of witnesses, but we are not bound by them. *Id.* Nor are we bound by the district court's conclusions of law. *Id.*

We review the district court's ruling to reopen the estate for an abuse of discretion. *In re Estate of Warrington*, 686 N.W.2d 198, 205 (Iowa 2004). An abuse of discretion exists where the district court has exercised its discretion "on grounds clearly untenable, or to an extent clearly unreasonable." *Id.*

III. Reopening the Estate. On appeal, the beneficiaries contend the trial court erred in reopening Ralph's estate after the farm real estate had passed to good faith purchasers for value. They rely on Iowa Code section 633.488 (2007), which states in pertinent part, "If any property of the estate shall have passed in the hands of good faith purchasers for value, the rights of such purchases shall not, in any way, be affected." Arguing the Pearsons are good faith purchasers for value, the beneficiaries claim this provision forecloses the Lewises' action.

Iowa law prescribes certain situations in which an estate may be reopened. Iowa Code §§ 633.487-.489. Section 633.488, which the beneficiaries rely on, allows for an estate to be reopened within five years of the final accounting by any adversely affected person not receiving notice. However, the district court did not rely on section 633.488 in reopening the estate. Instead,

it reopened the estate pursuant to section 633.489, which allows reopening “if any necessary act remains unperformed.” The court found reopening was appropriate because the Lewises’ had not been notified of the pending estate. Therefore it concluded under section 633.489 that necessary acts remained unperformed or other proper cause were both grounds for reopening the estate. It granted the motion to reopen to “allow the Lewises to establish whether they have any right to purchase the property under the will.”

A claim based on the failure to notify before the estate is closed is covered under section 633.488 which provides:

Whenever a final report has been approved . . . in the absence of any person adversely affected and without notice to the person, the hearing on such report and accounting may be reopened at any time within five years from the entry of the order approving the same

The petition to reopen the estate was not filed within five years of the final order and any claim of lack of notice is barred five years after the approval of the final order.

Lack of notice, if the five years have passed, cannot be grounds to reopen an administration under Iowa Code section 633.489 because it provides “a claim which is already barred can, in no event, be asserted in the reopened administration.” The Lewises’ claim based on lack of notice was barred when it was not filed within the five-year period. *See In re Property Seized for Forfeiture from Williams*, 676 N.W.2d 607, 613 (Iowa 2004) (stating that a lapse of the statutory limitations period extinguishes the right to seek relief in court and

deprives the court of authority to hear a particular case). We also recognize there are practical difficulties connected with the reopening of an estate.¹

Because we conclude it was error to reopen the estate we need not address whether the court was correct in its interpretation of the will.

REVERSED.

¹ In *In the Matter of the Estate of Witzke*, 359 N.W.2d 183, 185 (Iowa 1984), the court noted:

Other practical difficulties connected with the reopening of the estate . . . include payment of attorney fees for representing the estate in the action against it In connection therewith there would be the problem of the estate attempting to get back funds that had already been paid to the distributees or creditors prior to the closing of the estate so the reopened estate could honor petitioners' claim, if it is allowed by the court.