IN THE COURT OF APPEALS OF IOWA

No. 1-026 / 10-0960
Filed March 7, 2011

IN THE MATTER OF THE ESTATE OF GLEN A. WATERMAN, Deceased.

JINGLES WATERMAN,
Intervenor-Appellant.

Appeal from the Iowa District Court for Clayton County, John Bauercamper, Judge.

The surviving spouse of Glen A. Waterman appeals from a probate court order authorizing the administrators to sell two parcels of real estate belonging to his estate. **AFFIRMED IN PART, REVERSED AND REMANDED IN PART.**

John W. Hofmeyer III, Oelwein, for appellant.

Laura J. Parrish Maki of Miller, Pearson, Gloe, Burns, Beatty & Parrish, P.C., Decorah, for appellee.

Considered by Vogel, P., and Doyle and Tabor, JJ.

TABOR, J.

The surviving spouse of Glen A. Waterman appeals from a probate court order authorizing the administrators to sell two parcels of real estate belonging to his estate. She contends the order violated her homestead rights and failed to require the administrators to justify an instance of self-dealing. Because the probate court did not consider the homestead exemption when approving the sale of the house that the decedent shared with his common law spouse, we reverse the sale of the homestead and remand for further proceedings. Because the administrators substantially complied with the statute governing self-dealing, we affirm on that ground.

I. Background Facts and Proceedings

On May 10, 2008, fifty-one-year-old Glen A. Waterman died without a will. His parents, Verdeen and Loretta Waterman, filed a petition to administer their son's intestate estate. On May 20, 2008, the district court appointed them as administrators. At the time of his death, Glen lived with his long-time partner, Deb Voss.[1] On May 29, 2008, the administrators issued her a notice to quit, requiring her to vacate the homestead she shared with Glen within thirty days. In June, Jingles moved out with the assistance of friends. Loretta and Verdeen did not help her pack, but were present to ensure she did not take items that "did not belong" to her. The sheriff also was called to supervise the process. Loretta and Verdeen moved into Glen's house that summer.

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[1] On appeal, the parties note that Voss legally changed her name to Jingles Waterman during the pendency of this matter. Because all the parties share the surname Waterman, for clarity's sake, we will refer to the appellant as Jingles in our decision.

On October 2, 2008, they filed a report and inventory, indicating their son left no surviving spouse. On October 10, 2008, Jingles filed a document in probate court asserting that she was Glen's surviving spouse and electing to take "her intestate share" of the decedent's property. She also filed a claim in probate seeking $40,000 as "reimbursement for her joint survivor ownership interest in assets of the estate as well as a lien for improvements made to the estate during the marriage and/or cohabitation of the parties . . . ." On November 6, 2008, the estate's attorney filed notices of disallowance of the $40,000 claim and the spousal election.

The probate court held hearings on these disputed claims on June 24, June 25, and July 1, 2009. In its findings of fact, the court provided a thorough recap of the testimony concerning the relationship between Glen and Jingles. The evidence revealed that Jingles lived with Glen from March 2000 until his death eight years later. They worked together to make "substantial improvements" to Glen's home. They spent most of their free time together and enjoyed participating in historic fur-trade reenactments. Many witnesses testified to their "close and loving relationship" and believed from the way they referred to and treated one another that they were a married couple. Before Glen's death, his parents often visited in his home.

Both Glen and Jingles had been married before. Glen had no offspring. Jingle's children were grown, but she and Glen planned to adopt two of her grandchildren who had been placed in their care by the juvenile court for more than one year. In preparation for the adoptions, the couple attended court

proceedings and participated in a home study. The final formality was an official wedding ceremony set for May 24, 2008, in the Guttenberg city park.

Glen suffered from heart disease and experienced his first heart attack in 2003. Jingles cared for him during a lengthy rehabilitation period. A second, sudden heart attack caused his death on May 10, 2008.

The court's August 14, 2009 order determined that Jingles was Glen's common law spouse and that her election to take a share of the estate under Division IV of the probate code was valid.[2] But the court denied her $40,000 claim in probate.

In March 2010, Jingles wrote to Judge Bauercamper complaining about the representation she was receiving from her attorney. She informed the judge that on November 19, 2009, Loretta and Verdeen had "listed our home for sale." She said that she told her lawyer about the listing because "this was clearly after your ruling." She asked her attorney "to ask you for clarification on your ruling [b]ut was told the other lawyer would do so." Her attorney also told her that he would write to Loretta and Verdeen, "asking them to move out and to return our stuff." The letter went on to state:

> The house we are renting is up for sale as well. I have no way to move without the property or the equity returned to me. Both of the little ones are starting preschool now. They are special

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[2] The court did not cite a specific code section, but the applicable provision governing the surviving spouse's intestate share is Iowa Code section 633.211 (2007), under which Jingles would receive

> [a]ll the value of all the legal or equitable estates in real property possessed by the decedent at any time during the marriage, which have not been sold on execution or by other judicial sale, and to which the surviving spouse has made no relinquishment of right.

> needs children. So it's important we have a home that's stable and can be set up for their needs. Here is the properties Glen & I own
> 31868 Eclipse Road (our home)
> 31875 Eclipse Road (our house across the street)

She closed the letter by saying that she was placing herself "at the mercy of the courts" because she was unable to find an attorney to take over her case.

On March 22, 2010, the probate court filed a follow-up order noting that neither party had appealed from the August 14 order, but expressing concern that

> nothing has been filed in these proceedings indicating that the estate is being administered in accordance with that ruling and no further filings have occurred. This estate has been opened since May 21, 2008. Ordinarily, the court would expect an estate open that long to be closed by now. The court finds no delinquency notices filed by the clerk.
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> The claimant [Jingles Waterman] recently filed a letter with the clerk addressed to the undersigned judge. This letter discloses that she is not pleased with the status of these matters.

The court directed the administrators to file an interlocutory report on the status of the estate. On March 29, 2010, the attorney who had been representing Jingles applied for permission to withdraw, citing her dissatisfaction with his services expressed in the letter to the court. On April 7, the administrators filed the interlocutory report and a "Combined Petition For Authority to Sell Real Estate and Report of Sale." The petition sought court approval for the sale of two parcels of real estate held by the estate. The first property was Glen's homestead, at 31868 Eclipse Road in Mederville, Iowa. Attached to the petition was a purchase agreement showing the sellers accepted an offer of $20,000 for the homestead property on February 22, 2010. The second property was a building Glen used for storage at 31875 Eclipse Road,

which his parents bought from the estate for $4000 on March 2, 2010, according to a purchase agreement attached to their petition.

On May 4, 2010, the probate court held a hearing on the administrators' requests. Because her attorney was allowed to withdraw, Jingles appeared pro se. Loretta Waterman testified that after the probate proceedings in June and July of 2009, she listed Glen's real estate with a local realtor. The realtor received an offer on the house for $20,000, which Loretta considered a fair price "[w]ith the house market the way it is right now." Loretta further testified that she and her husband were offering to buy the second property, an uninhabitable house that Glen used for storage, for $4000—the same price Glenn paid for it. Loretta testified on direct examination that it was necessary to sell the real estate to cover the estate's expenses.

During the pro se cross examination, the following exchange occurred:

> Q. What bills do the house need to be sold for? A. There is funeral bills. There is taxes on the place. There is light bills. There is gas bills, over $14,000 worth of bills.
>
> Q. If you had not forced me out of there, those bills wouldn't have existed. A. I didn't force you to move out.

The court intervened and explained that Jingles would have an opportunity at a later time to object to the legitimacy of the bills to be paid from the sale of the properties.

The administrators also called their realtor to the stand. He testified that $20,000 was a fair value for Glen's home, despite the fact the assessed value was $25,000. He also opined that $4000 was a reasonable price for the storage

building and that it was not likely the administrators could find a buyer to pay more for the facility.

When the probate court told Jingles it was her turn to present evidence, she responded: "Nobody told me I would have to present evidence. I have none to present." The court advised her:

> [T]he Court has to decide whether to permit the house to be sold for these prices. Absent some other evidence from you, the evidence presented doesn't give me anything to turn down the proposed sale. Do you understand that?

She replied: "If we weren't forced out of our home, those bills would never exist." The court responded: "I understand that. Well, we can't turn the clock back."

On the record at the conclusion of the hearing, the court granted the administrators' application for authority to sell the properties, requiring the proceeds to be held in escrow and not spent on anything other than the expenses of the sale. The court memorialized its decision in a written order filed May 4, 2010. Jingles appeals from the probate court's ruling authorizing the administrators to sell the two properties.

II. Standard of Review

We review probate matters involving the sale of property de novo. Iowa Code § 633.33 (2009); *In re Estate of Bruen,* 350 N.W.2d 209, 211 (Iowa Ct. App. 1984). Although we are not bound by the district court's findings of fact, we give them weight, especially when the court is assessing witness credibility. *Id.*

III. Analysis

A. Homestead Rights

1. Laws Construed Broadly and Liberally

The purpose of statutes protecting the homestead is

> to promote the stability and welfare of the state by encouraging property ownership and independence on the part of the citizen, and by preserving a home where the family may be sheltered and live beyond the reach of economic misfortune.

In re Estate of Tolson, 690 N.W.2d 680, 682 (Iowa 2005). "[T]o secure the benevolent purposes of the homestead laws," we construe these laws broadly and liberally "in favor of the beneficiaries of the legislation." *Id*. (citation omitted).

The homestead right in Iowa is peculiarly favored. *Gustafson v. Fogleman*, 551 N.W.2d 312, 314 (Iowa 1996). "Regard should be had to the spirit of the law rather than its strict letter." *In re Matter of Bly,* 456 N.W.2d 195, 199 (Iowa 1990) (citations omitted). The policy of our law is to zealously safeguard homestead rights. *Id*.

2. Error Preservation

Jingles contends on appeal that the probate court's approval of the sale of Glen's house violated her homestead rights as his surviving spouse. She asserts that because the homestead was exempt from debts and claims against the estate under Iowa Code section 561.16 (2007), the probate court should not have approved its sale to cover expenses identified by the administrators. She also argues that the court's order violated her homestead rights under Iowa Code sections 561.11, 633.211, and 633.245.

The administrators argue that Jingles did not preserve the issue of her homestead rights in the probate court and thus cannot raise it on appeal. In response to the administrators' preservation argument, Jingles contends that pro se litigants such as herself are afforded "some leeway" when Iowa courts examine the record to see if an issue was adequately raised.

We first consider whether the preservation requirement should be relaxed given Jingle's pro se status at the hearing. We generally "do not utilize a deferential standard when persons choose to represent themselves." *Metropolitan Jacobson Dev. Venture v. Bd. of Review*, 476 N.W.2d 726, 729 (Iowa Ct. App. 1991).

> The law does not judge by two standards, one for lawyers and the other for lay persons. Rather, all are expected to act with equal competence. If lay persons choose to proceed pro se, they do so at their own risk.

Id.

But in a bit less strict vein, our appellate courts also have recognized that pro se litigants are entitled to a liberal construction of their pleadings. *See Munz v. State*, 382 N.W.2d 693, 697 (Iowa Ct. App. 1985); *see also Knight v. Knight*, 525 N.W.2d 841, 843 (Iowa 1994) (finding "some leeway must be accorded from precision in draftsmanship" of pro se petitions).

Following our rule that pro se pleadings be liberally construed, we find Jingles's letter to the probate court sufficiently raised her objection to the administrators' sale of the homestead she shared with her common law husband. It is true that the surviving spouse did not protest the sale of the property in the probate court by expressly referencing her homestead rights. But in her pro se

letter she did complain about the administrators' act of listing "our home" for sale after the court issued its order finding her to be Glen's common law spouse. She explained that she would not be able to provide a stable home for her grandchildren—whom she and Glen had planned to adopt—without the property or equity being returned to her. The concern articulated in her letter about sheltering their family from economic misfortune is precisely the situation that homestead rights are designed to address.

At the May 4, 2010 hearing, the court recognized that Jingles was contesting the sale of the property. In her cross examination of Loretta, Jingles questioned the need to sell the house to pay bills that would not have existed if the administrators had not filed a notice to quit, causing her to vacate the house. The administrators argue that Jingles did not present any evidence that she lived in Glen's home or intended to return to the homestead. But an earlier ruling in the same probate matter from the same district court judge reached unchallenged factual findings that Glen and Jingles lived together in his home at the time of his death and that she only moved out in response to a notice to quit filed by the administrators. The district court decided after the earlier hearing that Jingles was Glen's surviving common law spouse. Given that procedural history, Jingles was not required to offer additional evidence on May 4 to establish her homestead interest. *See Frazier v. Wood*, 214 Iowa 237, 240-41, 242 N.W. 78, 80 (1932) (explaining court may take judicial notice of earlier probate orders). The letter from the surviving spouse objecting to the sale of the house she

occupied with Glen and asserting her desire to return to that home with her grandchildren should have alerted the probate court to the homestead issue.

Not only is this interpretation of the surviving spouse's letter consistent with the liberal construction of pro se pleadings, but it gives proper regard to the broad spirit rather than the strict letter of the homestead exemptions. *See Bly*, 456 N.W.2d at 199 (construing the term "judicial sale" in section 561.16 to encompass any judicially compelled disposition of the homestead). While a direct invocation of the homestead provisions would have been the better pleading, to cut off Jingles's homestead rights because she did not explicitly identify the legal concept that safeguards her interest in the home she shared with her husband would violate the spirit of those revered protections. *See generally Summy v. City of Des Moines,* 708 N.W.2d 333, 338 (Iowa 2006) (explaining error preservation does not turn on thoroughness of research and briefing so long as nature of the issue is timely brought to the district court's attention).

The administrators point to *De France v. Traverse*, 85 Iowa 422, 423, 52 N.W. 247, 247 (1892), for the proposition that the law does not require the district court to assume a homestead right where no such right is claimed. *Traverse* is a far cry from the instant facts. In that case, the district court found De France in contempt for violating an injunction against selling liquor on the premises he owned and imposed a fine which became a judgment lien on his real estate. *Traverse*, 85 Iowa at 423, 52 N.W. at 247. On appeal, De France argued that the record showed that he lived upstairs from the saloon, and so the lien was

improperly levied on his exempt homestead. *Id.* Because the question of a homestead exemption was "in no way involved in the proceeding," our supreme court found no illegality in the contempt action. *Id.* at 424, 52 N.W. at 247. By contrast, this probate action centered on the house the surviving spouse shared with the decedent. The probate court already determined in an earlier hearing that Jingles was entitled to take her intestate share of Glen's estate as his common law spouse. The homestead exemption was intimately involved in these proceedings. We find the issue is preserved for our review.

3. Application of Homestead Exemption

At the hearing on the administrators' petition to sell the property, the district court told the surviving spouse that it had "to decide whether to permit the house to be sold for these prices." We believe that the district court characterized the issue raised by the petition too narrowly. The court was called upon to consider more than the reasonableness of the purchase price, it was required to determine if the administrators could legally sell the house at all. While the petition fails to cite any provision of the probate code, presumably the administrators were seeking authority to sell real property of the estate under section 633.388 or alternatively making a report of sale for court approval under section 633.399.

Under section 633.388, the petition must set forth the reasons for the application and describe the property involved. The petition filed by Glen's parents described two properties to be sold, one of which is located at 31868 Eclipse Road in Mederville, Iowa. In her letter to the court, Jingles referred to

that same address as one of two properties "Glen & I own" and as "our home." The only reason for the property sale cited in the petition was "so that the estate may be settled and closed." Before approving the petition, it was incumbent upon the probate court to see if the property was being sold for a purpose allowed under Iowa Code section 633.386.

Under section 633.399, after making a sale, the administrators must report to the court for approval. The statute then provides:

> The court shall examine said report, and if satisfied that the sale . . . has been at a price and upon terms advantageous to the estate, and, in all respects, made in conformity with the law, and that it ought to be confirmed, shall confirm the same . . . . If not satisfied that the sale . . . has been made in conformity with law and that it is to the best interests of the estate, the court may reject the sale . . ., and enter such order a the court may deem advisable.

Iowa Code § 633.399.

When examining the administrators' petition, the probate court was required to determine if the property described could be sold "in conformity with the law." That determination is also governed by section 633.386, which states:

> 1. Any real or personal property belonging to the decedent, except exempt personal property and the homestead, may be sold, mortgaged, pledged, leased or exchanged by the personal representative for any of the following purposes:
> *a.* The payment of debts and charges against the estate;
> *b.* The distribution of the estate or any part thereof;
> *c.* Any other purpose in the best interests of the estate.
> 2. Exempt personal property under such provisions as the court may direct, if not set off to the surviving spouse, may be sold, mortgaged, pledged, leased, or exchanged, provided that the surviving spouse consents thereto.
> 3. The homestead, under such provisions as the court may direct, if not set off to the surviving spouse and if the surviving spouse has not elected to occupy the homestead, may be sold, mortgaged, pledged, leased or exchanged.

> 4. The proceeds from the sale of any exempt personal property or from the sale of the homestead shall be held by the personal representative subject to the rights of the surviving spouse or issue, unless such surviving spouse or issue has expressly waived the rights to such proceeds.

Subsection one of section 633.386 provides the permissible reasons for selling the decedent's real property, but creates an exception disallowing the sale of the homestead. Subsection three provides that the homestead may be sold, "if not set off to the surviving spouse and if the surviving spouse has not elected to occupy the homestead." The probate court granted the administrators' petition to sell the property without reference to these statutory provisions and their requirements.

The administrators acknowledge in their brief that the homestead is ordinarily exempt from debts of the decedent and that this protection extends to the surviving spouse. *See generally Wheeler v. Meyer*, 201 Iowa 59, 61, 206 N.W. 301, 302 (1925); *Swisher v. Swisher*, 157 Iowa 55, 65-66, 137 N.W. 1076, 1080 (1912). But they argue that this record does not show the "nature of the property sold, whether it was the decedent's or the appellant's homestead." They assert that at most the probate court could "imply from the record is that the appellate lived on the premises at one time." They further contend the record "does not state why the appellant vacated the property or whether she had any intention to return." Finally, the administrators argue that even if the court found Jingles had a homestead right in Glen's property at one time, "the evidence is clear that she waived or abandoned that right."

We disagree that the probate record lacks factual support for Jingles's continuing homestead interest. In its August 14, 2009 ruling, the probate court found that Glen owned the home where he lived with Jingles and that she only moved out of the home after his death when evicted by the administrators. The administrators did not challenge those factual findings. In fact, they state in their appellees' brief: "[Jingles Waterman] was residing in Glenn's home at the time of his death; the Administrators issued a Notice to Quit to [Jingles] requiring her to vacate the Decedent's home." Jingles expressed in her pro se letter to the probate court that the rental house where she moved after leaving the homestead was up for sale and she had "no way to move without the [homestead] property or equity returned to me." When we consider the probate record in its entirety, we find ample evidence that Jingles retained a homestead interest in the property sought to be sold. The district court erred in approving the sale of the house belonging to Glen's estate without considering its status as the homestead of the surviving spouse.

We reverse the order approving the administrators' request to sell the house at 31868 Eclipse Road in Mederville and remand to the probate court for further proceedings consistent with our decision. *See City of Okoboji v. Iowa Dist. Ct.,* 744 N.W.2d 327, 331 (Iowa 2008) ("[O]ur judicial system is generally set up so the execution of an action needed to carry out the judgment of the appellate court is left to be done by the court in the best position to do so.").

B. Self-Dealing

In her next assignment of error, Jingles challenges the sale of a second parcel of property belonging to the estate—a house at 31875 Eclipse Road in Mederville, Iowa, used for storage. She argues that the administrators failed to comply with the requirements of Iowa Code section 633.155, which prohibits self-dealing in the sale of property without court approval.

That code section provides:

> No fiduciary shall in any manner engage in self-dealing, except on order of court after notice to all interested persons, and shall derive no profit other than the fiduciary's distributive share in the estate from the sale or liquidation of any property belonging to the estate. Every application of a fiduciary seeking an order under the provisions of this section shall specify in detail the reasons for such application and the facts justifying the requested order. The notice shall have a copy of the application attached, or, if published, it shall contain a detailed statement of the reasons and facts justifying the requested order.

Iowa Code § 633.155.

Jingles asserts that the administrators' petition for authority to sell the real estate is "completely devoid of any reason supporting self-dealing." She argues the court erred in approving the sale of this property to Loretta and Verdeen for $4000 when their petition failed to "specify in detail the reasons for such application and the facts justifying the requested order."

The administrators do not challenge the preservation of error on this issue. They instead argue that they complied with section 633.155 by providing notice of the proposed sale to the surviving spouse and by "adequately disclosing the reasons for self-dealing" at the hearing.

At the May 4, 2010 hearing, Loretta testified that the estate did not have sufficient cash assets to pay the outstanding bills without selling the real property. She told the court the house at 31875 Eclipse Road was not inhabitable and her son had used it for storage. The administrators listed the property for sale with Iowa Realty in Elkader starting on October 29, 2009. Loretta testified that Glen had purchased the property for $4000 and that she and her husband were offering the same amount to buy it from the estate. The administrators also called their realtor as a witness; he opined that $4000 was a fair price for the storage property and that the administrators were not likely to obtain an offer to purchase the property at a higher price.

Jingles counters by arguing: "The fact that the sale may or may not have been at the fair market value has nothing to do with the infirmed nature of the self-dealing transaction." She also contends that she should have been given an opportunity to buy the property.

It is true that the administrators' petition did not "specify in detail the reasons" Loretta and Verdeen needed to engage in self-dealing, as is required by the plain language of section 633.155. But we do not believe this deficiency in the petition ends our analysis. The question is whether we should require strict compliance with these provisions of section 633.155—as advocated by the surviving spouse—or whether substantial compliance will suffice.

"Substantial compliance is said to be compliance in respect to essential matters necessary to assure the reasonable objectives of the statute." *Sims v. NCI Holding Corp*., 759 N.W.2d 333, 338 (Iowa 2009). We see the objectives of

section 633.155 as two fold. First, the statute requires that "interested persons" have adequate notice that a fiduciary is seeking court approval for an act of self-dealing. *See In re Guardianship of Jordan*, 616 N.W.2d 553, 559 (Iowa 2000). Second, the statute mandates court approval of self-dealing to prevent the fiduciary from deriving a profit from the transaction. *See In re Estate of Snapp*, 502 N.W.2d 29, 33 (Iowa Ct. App. 1993) (defining self-dealing as those "situations in which a fiduciary personally profits from transactions between himself and the estate").

While the administrators fell short of strict compliance with section 633.155 in drafting their petition, we believe their petition and its attachments—when viewed in conjunction with the evidence presented at the hearing—substantially complied with the reasonable objectives of the statute. First, the administrators served their petition on the attorney then representing the surviving spouse and it was clear from the attached purchase agreement that they were seeking approval to buy the property themselves for $4000. She also received notice of the date of the hearing set for the matter. The administrators offered evidence at the hearing justifying their requested order. Also at the hearing, the court provided Jingles a reasonable opportunity to be heard. The administrators substantially complied with the notice requirements of the statute. Second, the administrators established that they were not deriving a profit from the purchase of the storage building. The evidence indicated that the building had been listed on the local real estate market for more than four months and the realtor did not receive any arms-length purchase offers more favorable to the

estate than the $4000 offered by Loretta and Verdeen. Loretta's testimony was uncontested that Glen also paid $4000 when he purchased the property. We find the administrators met their burden to show that they were not using their position as administrators to personally profit from the purchase of the property. The probate court did not violate section 633.155 in approving the sale of the storage building.

To recap, we reverse the portion of the probate court's order approving the sale of the estate's property located at 31868 Eclipse Road and remand for the court to consider the surviving spouse's homestead interests in determining how the property should be handled. We affirm the portion of the order allowing the administrators to sell the property at 31875 Eclipse Road in Mederville, Iowa, finding no violation of the provision on self-dealing.

AFFIRMED IN PART, REVERSED AND REMANDED IN PART.