IN THE COURT OF APPEALS OF IOWA

No. 1-091 / 10-1097
Filed July 13, 2011

**IN THE MATTER OF THE ESTATE
OF BERNICE MARY BADER, Deceased.**

**RAYMOND GAUL, KAREN MARSHALL,
GINA GAUL, STEVE GAUL, NICK GAUL,
AND ANTHONY GAUL,**
Plaintiffs-Appellants,

vs.

**ESTATE OF BERNICE MARY BADER,
Deceased, JANE MARIE EISMA, Executor,**
Defendants-Appellees.

Appeal from the Iowa District Court for Sioux County, Steven J. Andreasen, Judge.

Disinherited beneficiaries of a will appeal the dismissal of their action on statute of limitations grounds. **REVERSED AND REMANDED.**

Curt J. Krull of Krull Law Firm, L.L.C., Orange City, for appellants.

Jeff W. Wright and Marvin F. Heidman of Heidman Law Firm, L.L.P., Sioux City, for appellee Jane Marie Eisma.

Charles B. Haugland of Beck Gubbrud & Haugland, Hawarden, for appellee Estate.

Heard by Sackett, C.J., and Vogel, Vaitheswaran, Potterfield, Doyle, Danilson, and Tabor, JJ.

VAITHESWARAN, J.

Disinherited beneficiaries of a will appeal the dismissal of their action on statute of limitations grounds.

I. Background Facts and Proceedings

In 1995, Bernice Bader executed a will leaving her entire estate to her husband Perry or, if he predeceased her, to her surviving siblings and nieces and nephews. After Perry's death, Bernice executed a power of attorney appointing her brother, Raymond, as her attorney in fact. Raymond served in that capacity until May 2003 when Bernice revoked his power of attorney and appointed her niece, Jane Eisma, in his stead. At the same time, Bernice revoked her 1995 will and executed a new will leaving her entire estate to Eisma.

From May 2003 through November of that year, Bernice purchased certificates of deposit (CDs) with Eisma. The CDs were either purchased in joint tenancy with Eisma or designated Eisma or her husband as the pay-on-death beneficiaries. Bernice also gave Eisma and her husband two cash gifts of $22,000 each, one in October 2003 and the second on February 13, 2004.

Bernice's brothers, Raymond and Milo, became concerned about her actions and her competency. On March 5, 2004, Milo filed a petition for the involuntary appointment of a guardian and conservator and requested a copy of Bernice's current will. Bernice's attorney declined to provide it, explaining that Bernice had directed him not to disclose its contents.

Bernice eventually agreed to the appointment of a conservator. The conservator, People's Bank, filed an initial report and inventory to which Milo responded with a request that "all bank accounts, certificates of deposits, notes,

mortgages, stocks, bonds, or any other asset placed in a POD ownership (payable on death) be set aside in its entirety." He additionally requested the opening of Bernice's 2003 will. The district court approved the conservator's initial report and inventory, stated a separate action could be filed to challenge the money transfers, and denied the request to open Bernice's will.

On January 31, 2005, Milo wrote to the beneficiaries of Bernice's 1995 will about his concerns regarding Eisma's influence. The letter stated:

> Out of the blue, Ray was replaced by Jane Eisma as her Power of Attorney, Conservator and Guardian.
>
> I am concerned about how they (Jane and Denny) have handled Bunny's assets and her well being.
>
> . . . .
>
> Jane and Denny have made the following changes:
>
> - Had Bunny sign a new Will which I cannot see.
> - Had themselves named as Power of Attorney
> - Set up a gifting plan giving them $22,000 per year, to be continued each year. $66,000 to date.
> - Changed over $200,000 in CDs payable to Jane and/or Denny upon Bunny's death.
>
> . . . .
>
> Since you were named as a beneficiary in Perry's original will and I assume you were in Bunny's original will as well, I feel you are being deprived of your inheritance. I doubt that you are mentioned in the new will that Jane and Denny had her write and sign.

Bernice died in January 2009, and her 2003 will was admitted to probate. A month after her death, on February 11, 2009, Raymond and the other disinherited beneficiaries (with the exception of Milo who had since passed away) filed a petition in probate court contesting the will. The petition alleged the will should be set aside due to undue influence, fraud, lack of due execution, and lack of testamentary capacity.

The estate preemptively moved for partial summary judgment with respect to the lifetime (inter vivos) transfers to the Eismas. The estate asserted that any claim challenging those transfers was not raised in the petition and was accordingly barred by the five-year statute of limitations for fraud actions, as the beneficiaries learned of them in 2004. *See* Iowa Code § 614.1(4) (2009).

Prompted by the estate's motion, the plaintiffs, in March 2010, moved to amend their petition to add a claim for tortious interference with their inheritance rights. They alleged the will contest related to the 2003 will.[1] They further alleged the "inheritance that was intended for [them]" prior to that will "was affected by all or part of the monies or assets used to make the cash gifts and POD certificates of deposit." Finally, in pertinent part, they alleged the "mere fact that the tort action of Intentional Interference with Inheritance Rights involves inter vivos transfers does not prevent the action from being tried with the action to set aside the Will." This final allegation was presumably an effort to counter the estate's statute of limitations defense. While the plaintiffs agreed with the estate that the action was governed by the five-year limitations period in section 614.1(4), they asserted their claim did not accrue when they learned of the transfers but when Bernice died and her 2003 will was admitted to probate.

The district court concluded the claim accrued in early 2005, when Milo's letter was sent, rather than in 2009. As more than five years had elapsed before the plaintiffs moved to add their tortious interference cause of action, the court

[1] Their amended petition refers to the "May 7, 1993" will, which is clearly incorrect.

concluded their action was time-barred and granted the estate's partial motion for summary judgment. This appeal followed.[2]

Our review of the district court's ruling on a summary judgment motion is on error. *See Sieh v. Sieh*, 713 N.W.2d 194, 196 (Iowa 2006); *see also* Iowa R. App. P. 6.907. Summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 1.981(3).

II. Accrual of Cause of Action

"Actual application of the appropriate statutory period to a particular case requires the determination of when the claim accrued." *Sandbulte v. Farm Bureau Mut. Ins. Co.*, 343 N.W.2d 457, 462 (Iowa 1984), *overruled on other grounds by Langwith v. Am. Nat'l Gen. Ins. Co.*, 793 N.W.2d 215 (Iowa 2010).

> The general rule is that a cause of action accrues when the aggrieved party has a right to institute and maintain a suit. Such a right exists when "events have developed to a point where the injured party is entitled to a legal remedy." Furthermore, the discovery doctrine provides that a cause of action does not accrue until plaintiff has in fact discovered that he or she has suffered injury or by the exercise of reasonable diligence should have discovered it.

Id. (citations omitted).

In addressing the statute of limitations question, both the plaintiffs and the estate cite two opinions recognizing and discussing the tort of wrongful interference with a bequest. *See Huffey v. Lea*, 491 N.W.2d 518 (Iowa 1992);

[2] The plaintiffs initially filed an application for interlocutory appeal under Iowa Rule of Appellate Procedure 6.104. However, the Iowa Supreme Court held the ruling of the district court was appealable as a matter of right and transferred the case to our court.

Frohwein v. Haesemeyer, 264 N.W.2d 792 (Iowa 1978). We will begin with those opinions.

In *Frohwein*, the decedent's final will was admitted to probate. The plaintiff filed a will contest action in the probate proceedings. *Frohwein*, 264 N.W.2d at 793. He asserted that he was the named beneficiary of the decedent's first will, and the defendants conspired to defraud him by having him removed from the final will. The will contest action was dismissed on statute of limitations grounds. *Id.* at 793–94. After the dismissal, Frohwein filed a separate action alleging he was deprived of property he expected to receive from the prior will. *Id.* at 794. He again alleged the defendants' fraudulent actions caused the decedent to revoke her old will and execute the new will. *Id.* The second action was transferred to probate court. That court dismissed the action on the ground the statute of limitations had expired and res judicata barred the subsequent proceeding. *Id.* The Iowa Supreme Court reversed. *Id.* at 795. The court concluded that Frohwein's second action was not a collateral attack on the prior will contest action but an independent cause of action for wrongful interference with a bequest which, at least at this early stage, was viable. Without ruling on the applicability of the alternate statute of limitations ground relied on by the district court, the Iowa Supreme Court remanded the matter to the district court for further proceedings. *Id.*

In *Huffey*, the decedent executed a will under which Huffey was to receive her farm. 491 N.W.2d at 519. The decedent later executed a new will giving the farm to others. When she died, the last will was admitted to probate, and Huffey and his wife began an action contesting that will. *Id*. This action was tried to a

jury, which found the will was procured by undue influence. *Id*. The Huffeys then filed an action against the individuals who were found to have exercised the undue influence. They alleged the defendants tortiously interfered with the testator's intent to devise a farm to them. *Id.* at 520. As in *Frohwein*, the district court concluded the action was barred by the doctrine of claim preclusion.[3] *Id.* The Iowa Supreme Court disagreed and held the will contest action and the subsequent tort action were not the same "claim" for purposes of the claim preclusion doctrine, as the plaintiffs could proffer different evidence in the second action, albeit with some overlap, and the plaintiffs could not have received a complete remedy in the first action. *Id.* at 522.

Both *Frohwein* and *Huffey* addressed the question of claim preclusion. Neither answered the question of when a cause of action for intentional interference with a bequest accrues for statute of limitations purposes. The holdings of those cases are accordingly of limited utility in deciding the specific issue before us.

Returning to the facts of this case, the estate asserts the January 2005 letter from Milo to the prospective beneficiaries indisputably establishes that the plaintiffs discovered or through reasonable diligence should have discovered their injury at that time. We disagree. The injury alleged by the plaintiffs was the prospective beneficiaries' disinheritance following an expected bequest. In other words, the plaintiffs had to show that Bernice made a will that was subsequently revoked. *See* Nita Ledford, *Note—Intentional Interference with Inheritance*, 30

[3] Claim preclusion is a facet of the doctrine of res judicata. *See Spiker v. Spiker*, 708 N.W.2d 347, 353 (Iowa 2006).

Real Prop. Prob. & Tr. J. 325, 328 (1995). Milo's 2005 letter does not indisputably establish this fact. He stated the recipients of the letter were named as beneficiaries in Perry's will, and he assumed they were also named as beneficiaries in Bernice's 1995 will. He further stated he was not allowed to see Bernice's 2003 will. Both wills predated the inter vivos transfers to Eisma. If Milo and the other beneficiaries did not see Bernice's 1995 will[4] and were not allowed to see the 2003 will, there is a question as to when they learned that the cash transfers to Eisma injured their interests. We conclude there exists a genuine issue of material fact as to when the claim accrued. This issue precludes summary judgment.

We emphasize our opinion is limited to the question of whether the district court was correct in deciding as a matter of law that the cause of action for intentional interference with a bequest accrued in 2005. We make no comment on other issues raised or alluded to by the parties, such as whether the tort of intentional interference with a bequest encompasses inter vivos transfers, whether the tort could or should have been brought during Bernice's lifetime, whether the plaintiffs were obligated to exhaust probate remedies before filing this action or could have obtained the same relief in other actions such as the conservatorship proceeding, whether the plaintiffs had standing to sue in 2005, or whether the plaintiffs can prove the elements of this cause of action. Some or

[4] We note Raymond testified in a deposition that he saw Bernice's 1995 will in the spring or summer of 2002 when he became her power of attorney. But there is no evidence he shared the contents of that will with the other prospective beneficiaries, though they may have anticipated an inheritance based on Milo's 2005 letter.

all of these issues may have to be decided at some point, but they do not directly bear on the narrow statute of limitations question before us.

We reverse the partial summary judgment ruling and remand for further proceedings.

REVERSED AND REMANDED.