IN THE COURT OF APPEALS OF IOWA

No. 2-022 / 11-0603
Filed February 29, 2012

IN THE MATTER OF THE ESTATE OF LOUIS NELSON, Deceased.

SCOTT LEWIS, SHANNON LEWIS and PATRICIA LEWIS,
Appellants,

vs.

ESTATE OF LOUIE NELSON, DONALD NELSON and RICHARD NELSON,
Appellees.

Appeal from the Iowa District Court for Adair County, Darrell J. Goodhue, Judge.

Appeal from the district court's ruling on the claims of the appellants in the estate of Louie Nelson. **AFFIRMED.**

Matthew J. Hemphill of Bergkamp, Hemphill, Ogle & McClure, P.C., Adel, for appellants Scott and Shannon Lewis.

Michael D. Ensley of Hanson, Bjork & Russell, L.L.P., Des Moines, for appellant Patricia Lewis.

Doyle D. Sanders and Mark C. Feldmann of Beving, Swanson & Forest, P.C., Des Moines, for appellees Donald and Richard Lewis.

David L. Charles, Des Moines, and Orville Bloethe, Victor, for appellee Estate of Nelson.

Considered by Eisenhauer, C.J., and Danilson and Bower, JJ.

BOWER, J.

Patricia Lewis, one of decedent's three children, and her three children, Scott, Trisha, and Shannon, appeal from the district court order granting the executor's application to distribute income and denying their claims to a share of the estate. Patricia contends the court erred in ruling she could not make any claims under the will because she violated the family settlement agreement. Her children join her claim and also claim the court erred in ruling the family settlement agreement disinherited them. We affirm.

I. Background Facts and Proceedings.

Louie Nelson's family has a history of acrimonious intra-family disputes and litigation. In 1998 Louie exercised a power of appointment under his late wife Audrey's will. *See Nelson v. Nelson*, No. 04-1020 (Iowa Ct. App. Oct. 12, 2005). Her will granted various parcels of land to her heirs, including appellant Patricia Lewis and several Nelsons. *Id.* After fights over Louie's exercise of the power of appointment, the land was partitioned by judicial order in December 1999. *Id.* Nearly two more years of "legal wrangling over the fruits of Audrey's will" ensued. *Id.* On May 14, 2001, the family members reached a settlement. The terms of the family settlement agreement were dictated into the record in court, reduced to writing, and, following a September 24 hearing, incorporated into the court's order enforcing the agreement, filed on October 11.[1] The

[1] Some family members claimed no agreement was reached, but the court's order was affirmed on appeal. *See In re Irrevocable Trust Agreement of Nelson*, No. 01-1871, 2002 WL 184912 (Iowa Ct. App. Aug. 14, 2002) ("Review of the entire record clearly indicates a settlement was reached on May 14, 2001. It should be enforced.").

settlement included a provision, paragraph ten of the order, that severely penalized anyone who materially violated the settlement agreement:

> If, after May 14, 2001, any of the parties materially violates any provision of this agreement or undertakes to interfere with the rights of any other party arising under this order and the May 14, 2001 agreement which underlies it, *that party shall have waived and forfeited his or her rights to receive any property of any kind or description from Louie Nelson's estate*.

(Emphasis added.)

In June 2001 Louie married Maxine. In February 2002 Louie executed his last will and testament. It evidenced his intent that his three children be treated equally and receive equal shares. Article V was a provision attempting to resolve family disputes:

> Any judgments against any child held by me or by any of my children or grandchildren against any other child or grandchild shall be cancelled and held for naught and this is a specific condition to the inheritance of anything under this my last will and testament by any child or grandchild. If any such debt, judgment, claim, lien, or demand is not released as to the other child, such non-cooperating child or grandchild shall have his or her inheritance reduced by the amount it damages the person who has the judgment or claim against him or her.

In July 2003 Patricia obtained Louie's signature on an offer to buy, in which he agreed to sell his interest in the family farm land to the Scott Lewis[2] Trust for $405,000. In September 2004 Louie executed the real estate contract that conveyed his interest in his farm land to the trust. The contract provided for a down payment of $100 and annual payments of $32,000, with any unpaid balance to be forgiven at Louie's death. Louie died in December 2004.

When other family members discovered the contract, more litigation ensued. After a five-day trial in 2006, the court issued a very detailed ruling in

[2] Scott Lewis is one of Patricia's three children.

February 2007. The court determined the contract was the product of undue influence Patricia exercised over Louie, set the contract aside, voided the accompanying deed, and ordered partition of the land. However, the court also awarded attorney fees to the estate and to Patricia's brothers, the Nelsons. The court did not find Patricia's actions were a material violation of the 2001 family settlement agreement.

On appeal, this court affirmed the district court except on the issue of violation of the family settlement agreement. *See In re Estate of Nelson*, No. 07-0422 (Iowa Ct. App. Feb. 10, 2010). We concluded "Patricia's securing Louie's signature on the real estate contract, and Scott's complicity, *was a material violation of the family settlement agreement, triggering the forfeiture provision of the agreement.*" *Id.* (emphasis added). In footnote eight, concerning Patricia's challenge to the district court's partition of the land, we noted:

> As a beneficiary of the Louie Nelson Estate, Patricia may have had an interest in the outcome of the partition action at the time she filed her appeal, but because we find the forfeiture provision of the family settlement agreement was triggered, it is no longer necessary for us to reach this issue on appeal.

Id. In footnote nine, we addressed the forfeiture's effect on Patricia and Scott concerning other claims in the probate of Louie's will:

> Because we find the forfeiture provision of the family settlement agreement is triggered by Patricia and Scott, we need not address the Nelsons' assertion that the district court erred in precluding them from proceeding on their other claims in probate.

Id. On April 16, 2010, the supreme court granted further review. On May 27, the court set the case for nonoral submission in September. On November 9, the court concluded further review "was improvidently granted" and rescinded the April order granting further review.

This brings us to the proceedings that are the genesis of the current appeal. In January 2011 the executor filed an application to compromise claim, sell real estate, extend time to close estate, pay attorney fees, and distribute taxable income. The application to distribute income referenced this court's February 10, 2010 language concerning the triggering of the forfeiture provision of the family settlement agreement as it related to Patricia's inheritance from Louie's estate and sought to distribute estate income equally only to Patricia's brothers, the Nelsons. Patricia objected.

Following a hearing on January 24, 2011, the court ruled from the bench on Patricia's objections: "The Court specifically finds that Patty Lewis has no interest by reason of the Court of Appeals decision. It's obviously res judicata or at least issue preclusion as to the issue." In the order filed January 25, the court granted the application to compromise claim, sell real estate, extend time to close estate, and pay attorney fees. It took the application to distribute income under advisement pending the court's determination "of the rights of the parties' children, as parties in interest, devisees, or heirs of the decedent, whether pursuant to the last will and testament of the decedent, under the antilapse statute or any common law concept of antilapse." A flurry of resistances and post-trial briefs followed.

On March 8 the court issued its ruling on the claims of Patricia's three children. It provided, in pertinent part:

> All parties to this proceeding are aware of the Court of Appeals' holding rendered *In the Matter of the Estate of Louie Nelson*, Slip Op. No. 9-889/[07]-0422. The Court of Appeals determined that by reason of Patricia Lewis exerting influence over

> the decedent, that she had committed a material violation of the settlement agreement approved by a court order entered September 24, 2001. That order relied on a family settlement agreement, which provided among other matters:
>
> > The parties to this agreed-upon settlement are Louie Nelson, Donald Nelson, Mary Margaret Nelson, Patricia Lewis, Arnold Lewis, Scott Lewis, Trisha Lewis, and Shannon Lewis or an of them or any combination of them and anyone claiming by or through them.
>
> The Court of Appeals decided the above case on the basis of the agreement. The terms of the agreement are controlling and not the decedent's last will and testament or the laws of intestate succession. It may have been Patricia's interest that was forfeited but Scott, Trisha, and Shannon are trying to claim through her and are as barred from taking under the agreement the same as she is. There is no other way to interpret their claims other than an attempt to take through Patricia. Furthermore, each one of the claimants was a party to the agreement which prohibited them from taking through her in the event of her forfeiture.

Patricia appealed, as did her three children, Scott, Shannon, and Trisha.

II. Scope of Review.

Under Iowa Code section 633.33 (2011), all actions of the probate court, except for some specific actions not applicable here, are tried in equity. Our review of equitable actions is de novo. Iowa R. App. P. 6.907.

III. Merits.

A. Patricia. Patricia Lewis claims the court erred "in determining that Article V of Louie's will was no longer applicable" and she "could not make any claims related to the will due to the principles of res judicata and/or issue preclusion." Patricia argues issue preclusion or principles of res judicata do not apply to her claims concerning Article V of Louie's will because that issue was not addressed in any prior proceedings. While we agree with Patricia that prior proceedings did not address Article V of Louie's will, we conclude, as did the

district court, that our prior decision that she materially violated the family settlement agreement, "trigger[ed] the forfeiture provision of the agreement." *In re Estate of Nelson*, No. 07-0422 (Iowa Ct. App. Feb. 10, 2010). The effect of that forfeiture provision is that Patricia has no interest in any of Louie's estate under the will. We noted that effect in footnotes eight and nine of the opinion as it related to Patricia claims and also the Nelsons' claims against Patricia and her children. *Id.* The district court correctly understood the effect of our decision. When Patricia filed a "supplemental response to application to distribute income," the court struck the response on the application of the Nelsons.

Patricia materially breached the family settlement agreement. The forfeiture provision of the agreement provides that Patricia forfeited "*her rights to receive any property of any kind or description from Louie Nelson's estate*." It makes no difference what bequests or inheritance the will provided for her because she forfeited any rights to receive anything under the will. The district court correctly analyzed Patricia's claims and rights under the terms of the family settlement agreement. Our 2010 decision is the law of the case; the district court correctly understood our decision and applied it correctly in denying Patricia's claims. We affirm the decision of the district court denying Patricia's claims. We need not address any of Patricia's arguments concerning the application or interpretation of Louie's will because she is not an interested party.

B. Patricia's Children: Scott, Trisha, and Shannon.

The children join Patricia's arguments in section VII of her brief concerning the district court's determination Patricia could not make any claims related to the

will because of issue preclusion or principles of res judicata. Our resolution of Patricia's claim concerning the will in the immediately preceding section of this decision applies equally to her children's claim in their brief.

Scott, Trisha, and Shannon also contend the court erred in holding the 2001 family settlement agreement "disinherited" them. The district court, considering the language of the family settlement agreement, concluded Scott, Trisha, and Shannon were claiming an interest in Louie's estate "through Patricia" and the family settlement agreement covered Patricia, Scott, Trisha, and Shannon "or any of them or any combination of them and anyone claiming through them." As Patricia's actions resulted in forfeiture of her interest in Louie's estate, so the forfeiture operated to cut off anyone claiming the forfeited interest through her. The district court concluded:

> The terms of [the family settlement] agreement are controlling and not the decedent's Last Will and Testament or the laws of intestate inheritance. It may have been Patricia's interest that was forfeited, but Scott, Trisha, and Shannon are trying to claim through her and are as barred from taking under the agreement the same as she is. There is no other way to interpret their claims than an attempt to take through Patricia. Furthermore, each one of the claimants was a party to the agreement which prohibited them from taking through her in the event of the forfeiture.

Scott, Trisha, and Shannon point to the language of the family settlement agreement in support of their claim Patricia's actions affected only *her* interest:

> If, after May 14, 2001, any of the parties materially violates any provision of this agreement or undertakes to interfere with the rights of any other party arising under this order and the May 14, 2001 agreement which underlies it, *that party* shall have waived and forfeited his or her rights to receive any property of any kind or description from Louie Nelson's estate.

(Emphasis added.) They argue the language cited by the district court only describes who are parties to the agreement, which they acknowledge they are,

but does not mandate the result reached by the court because they are not "that party" who waived and forfeited her rights. The family settlement agreement does not use the term "disinherited." Scott, Trisha, and Shannon argue if that had been the case, then their share as Patricia's issue, descendants, or would-be heirs also would have been waived and forfeited by Patricia's violation of the agreement. They assert the district court "went too far and committed error in applying the sanction of the 2010 order to parties not in violation of that order." Scott, Trisha, and Shannon contend Patricia's "waived" interest in Louie's estate should pass to them either under the residuary clause of his will or, alternatively, under the laws concerning intestacy. They base their arguments on cases dealing with waiver and renunciation. *See In re Estate of Rohn*, 175 N.W.2d 419 (Iowa 1970); *In re Estate of Loranz*, 256 Iowa 818, 128 N.W.2d 224 (1964).

We conclude the district court correctly analyzed the circumstances before it under contract principles. When Patricia materially violated the family settlement agreement, she forfeited and waived her right to receive anything from Louie's estate. Anyone claiming an interest through her also lost the right to anything from Louie's estate. A stream cannot rise higher than its source. *See Rohn*, 175 N.W.2d at 422.

Even if we agreed Louie's will should control, instead of the family settlement agreement, Scott, Trisha, and Shannon would take nothing. If *Loranz* is properly understood to hold a waived or renounced bequest passes under the residuary clause of the will, *Loranz*, 128 N.W.2d at 225-26, then Patricia's waived

and forfeited interest passes in equal shares to the two remaining living children of Louie under Article VIII, Section B(2) of Louie's will.

Even if there were no residuary clause in Louie's will and we agreed Patricia's waived and forfeited interest should pass under the laws of intestacy, *see Rohn*, 175 N.W.2d at 422, because Patricia "previously extinguished the devise," "no devise exists" for her. *See id.* Under Iowa Code section 633.219, Louie's estate, except for any portion going to a surviving spouse, would go to his issue, per stirpes. Iowa Code § 633.219(1). Louie has three "issue," Patricia and her two brothers. Her interest is waived and forfeited, so it would go to her brothers.

IV. Conclusion.

The district court correctly applied contract principles to the claims of Patricia and her children. Because Patricia materially violated the terms of the family settlement agreement, she waived and forfeited anything she might have received from Louie's estate. Because her children, Scott, Trisha, and Shannon, only have a claim through Patricia, and she has no claim, their arguments fail. Even if we agreed with their arguments that Patricia's share should pass either through the residuary clause of the will or through the laws of intestacy, in either case Patricia's share would pass to her two brothers, not her children.

AFFIRMED.