

**IN THE COURT OF APPEALS OF IOWA**

No. 2-027 / 11-0898  
Filed February 29, 2012

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

**MAXINE NELSON,**  
Appellant.

**DONALD NELSON and  
RICHARD NELSON,**  
Appellees.

**WARREN VARLEY, Executor of  
Estate of LOUIE NELSON,**  
Appellee.

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

Appeal from the district court ruling on the claim of a surviving spouse.

**AFFIRMED.**

James L. Sayre of James L. Sayre, P.C., Clive, for appellant.

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

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

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

**BOWER, J.**

Maxine Nelson, the surviving spouse of decedent Louie Nelson, appeals from the district court order denying her claim for a share of the estate. She contends the court erred in ruling she was not entitled to take under decedent's will. We affirm.

**I. Background Facts and Proceedings.**

Before Maxine married Louie in June 2001, they entered into a prenuptial agreement that prohibited her from taking her statutory share of his estate as provided in Iowa Code sections 633.236 through 633.247 (2001). In February 2002 Louie executed a will that established a residuary trust/marital trust for Maxine's benefit. Louie died in December 2004. The will was admitted to probate in early 2005. On May 28, 2005, a notice was sent to Maxine advising her of her right to take an elective share and further notifying her that if she failed to file an election within four months "you shall be deemed to take under the Will of the Decedent." The four months for filing an election expired on September 28, 2005. On October 18 Maxine filed a document with the clerk of court,<sup>1</sup> dated October 16, which stated, "I am of course the surviving spouse in the Estate of Louie Nelson. Under the Iowa Probate Code, I refuse to take under the Will." On October 17 Maxine signed a quit claim deed of all her rights in Louie's undivided interest in real estate to Scott Lewis, as trustee of the Scott Lewis Revocable Trust. The quit claim deed was to supplement the warranty deed signed by Louie that conveyed the property to the trust.

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<sup>1</sup> Iowa Code section 633E.4 requires a disclaimer to be filed with the trustee. As this issue has not been raised it is waived.

Based on Maxine's failure to file a timely election not to take under the will, the executor, in the federal estate tax return dated March 7, 2006, "elect[ed] to exercise election of QTIP<sup>[2]</sup> to the extent of [\$125,436], which will result in this estate not paying any federal estate tax."

In 2007, following the district court order setting aside the sale of property to Scott Lewis and the trust, Maxine filed a resistance to the executor's application for waiver of appraisal prior to partition. In it she described the document filed on October 18, 2005,<sup>3</sup> and the October 17 quit claim deed as "the steps described to abandon my rights under the Will."

On May 29, 2007, Maxine filed a revised application for a ruling, requesting that the court order the executor to create and fund the residuary trust/marital trust in the amount of the QTIP election, and to abate all other shares to the extent necessary if sufficient funds are not available to fund the trust. On February 24, 2011, Maxine's attorney filed an appearance and application to set hearing, asserting the revised application for a ruling had not yet been considered by the court.

Following a hearing in April, the court issued its ruling regarding Maxine's claims on May 5, 2011. The court ruled, in part:

Maxine in her brief seems to suggest that the document filed on October 18, 2005, is an election not to take under the decedent's Last Will and Testament. That is not a correct characterization of the instrument that was filed. The surviving

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<sup>2</sup> QTIP stands for "qualified terminable interest property." See 26 U.S.C. § 2056(b)(7)(B) (2000); see also Iowa Code § 450.3(7) (2005) (setting forth treatment of qualified terminable interest property for Iowa inheritance tax purposes).

<sup>3</sup> The resistance also stated "I previously elected to take against the will of Louie, which would have given me property."

spouse's right to elect not to take determines whether or not he or she is to receive under the decedent's will or take the statutory elective share as provided by [Iowa] Code [section] 633.238 to [section] 633.240. Maxine had no right to take the statutory elective share by reason of the antenuptial agreement. Instead, the document was a disclaimer as defined under Chapter 633E of the Code or a "rejection" or "renunciation" as recognized long before Chapter 633E was enacted. Whether or not there has been a renunciation of a bequest is a fact question, but Maxine's contention that the October 18, 2005 document is vague or that she didn't understand it in the absence of legal counsel is not supported by the record. "I refuse to take under the Will" can hardly be called ambiguous. Furthermore, her position was reiterated by her counsel before the Court when the trial involving the decedent's other beneficiaries was proceeding. Finally, she filed the document entitled "Resistance to Application of Waiver, etc." in March of 2007 in which she acknowledged she had filed the refusal to take under the decedent's Last Will and Testament.

. . . .  
In summary, Maxine filed an effective rejection of a bequest that she may have been entitled to take under the decedent's Last Will and Testament.

## **II. Scope and Standards of Review.**

Actions to establish contested claims "shall be triable in probate as law actions." Iowa Code § 633.33 (2007). Our review is for correction of errors at law. Iowa R. App. P. 6.907. The findings of the district court are binding on us if supported by substantial evidence. Iowa R. App. P. 6.904(3)(a).

## **III. Merits.**

Maxine contends the district court erred in its ruling by failing to hold she was entitled to take under Louie's will. She frames the issue as a denial of the bequest to her in the will. Maxine argues, as she did not elect to take against the will, she should get the bequest to her in the will. Additionally, she argues the court has equitable powers to grant her the relief requested, and since the other

beneficiaries acquiesced in the estate's action to take a deduction for her bequest, the beneficiaries are now estopped from challenging her claim.

Two of Louie's children and one grandchild, "the Nelsons," respond that the court correctly ruled Maxine made an irrevocable disclaimer. They also question whether error was preserved because they assert the issue was adjudicated in 2006 and 2007 in other proceedings and Maxine did not appeal from the district court's decisions in those matters. From our review of the record, we do not believe the issue on appeal was fully tried and adjudicated in the earlier proceedings, and we choose to address that issue in this appeal.

Maxine correctly notes that she did not make an election to take against the will within the time provided by statute, so she was deemed to take under the will. See Iowa Code § 633.237(1) (2005) (providing "unless, within four months after service of the notice, the spouse files an election [to take the statutory elective share], the spouse shall be deemed to take under the will"). After the time for election expired, Maxine filed a document identifying herself as the surviving spouse and stating, "Under the Iowa Probate Code, I refuse to take under the will." The district court found that document to be a "disclaimer" under chapter 633E or a "rejection" or "renouncement" as recognized before the enactment of chapter 633E. See *id.* § 633E.2(3) (defining "disclaimer" as "the refusal to accept an interest in or power over property"); see also *Goodsman v. Jannsen*, 234 Iowa 925, 927-28, 14 N.W.2d 647, 648 (1944) (discussing principles of "renunciation").

The transcript of the hearing on the widow's claims makes reference to Item 3 of Exhibit 1, which now appears in the supplemental appendix. Item 1 of Exhibit 3 is Maxine's previously-mentioned resistance to application for waiver of appraisal prior to partition in kind. Although the motives for renunciation are immaterial, see *In re Estate of Rohn*, 175 N.W.2d 419, 421 (Iowa 1970), this exhibit explains what Maxine sought to accomplish by filing the document on October 18, 2005, and the October 17, 2005 quit claim deed. These documents present substantial evidence supporting the district court's finding that Maxine disclaimed the bequest to her in Louie's will. She stated she wanted to avoid receiving property under Louie's will so that his daughter Patricia would inherit all his property. Once the court invalidated the contract for sale of the property to the Scott Lewis Trust, Maxine noted that was "certainly, a different result than anticipated when I took the steps described to abandon my rights under the Will."

She continued:

I guess you could say my position has changed completely from not wanting real estate, to, rather, wanting it, because I wanted what my husband wanted, that Patty Lewis possess the interest of his estate. . . . [S]ince that is not to happen, my rights surrendered above, should be viewed from the point of view that I should retain the rights to the property given unto me by my late husband.

Maxine acknowledged she abandoned and surrendered her rights to the bequest to her in Louie's will.

The district court correctly determined Maxine took under the will because she did not file an election to take against the will within the statutory time provided. The court also correctly determined the document filed on October 18, 2005, was a disclaimer as provided for in Iowa Code chapter 633E. Once filed, a

disclaimer is irrevocable. See Iowa Code § 633E.5. We affirm the district court's ruling denying Maxine's claims.

**AFFIRMED.**