IN THE COURT OF APPEALS OF IOWA

No. 2-371 / 11-1444 Filed June 13, 2012

STEVE COLLIS,

Claimant-Appellant,

VS.

In the Matter of the Estate of WILLIAM G. ROTHMEYER,

Estate-Appellee.

Appeal from the Iowa District Court for Polk County, Ruth B. Klotz, Associate Probate Judge.

Steve Collis appeals from the probate court's ruling on his claim against the Estate of William G. Rothmeyer. **AFFIRMED.**

Thomas J. Cahill of Cahill Law Offices, Nevada, for appellant.

John P. Dollar of Wilson, Deege, Dollar, Despotovich & Riemenschneider, West Des Moines, for appellee.

Considered by Eisenhauer, P.J., and Tabor and Bower, JJ.

BOWER, J.

Steven Collis appeals from the probate court's ruling on his claim against the Estate of William G. Rothmeyer for payment of \$20,000 due on a contract for the sale of a bail bond company. He contends the court erred in finding it lacks jurisdiction to enter an order. Because the probate court lacks jurisdiction to adjudicate the rights of a business that was not a party to the proceedings, we affirm.

I. Backgrounds Facts and Proceedings.

Rothmeyer and Collis were both in the bail bonds business. Rothmeyer operated his business under the name Fez, Inc. d/b/a lowa Bail Bonds, Inc. Collis operated under the names A-1 Bail Bonds, Jail Busters, and Collis Bail Bonds.

On November 30, 2007, Rothmeyer entered into a sales contract with Collis and his wife, CoraLee. In exchange for transfer of the Collises' businesses, Rothmeyer agreed to pay \$80,000 in four \$20,000 installments, due in January on each successive year starting in 2008 and ending in 2011. Collis received a payment in 2008, although he does not recall the source. In 2009 he received payment from Iowa Bail Bonds.

On September 4, 2009, Rothmeyer died, and his will was admitted to probate on September 9, 2009. The sixty shares of Fez, Inc. were divided equally among Rothmeyer's three children. The following January, Collis received the scheduled \$20,000 payment on the sales contract. Collis believes the payment was made by Iowa Bail Bonds.

When Collis did not receive the final \$20,000 payment on the contract as scheduled in January 2011, he filed a claim in probate. Rothmeyer's estate disallowed the claim, arguing it was untimely because it had not been made within four months of the second publication of notice. The estate claimed the sales contract was ratified by Fez, Inc., which cannot join the estate in a probate proceeding.

Following a hearing, the probate court determined the claim was timely because Collis was a readily ascertainable creditor and did not receive notice as required by Iowa Code section 633.410. However, the court found there was a question as to whether the debt was a personal obligation or had become a business obligation. Because the probate court has no jurisdiction over a business entity, the court suggested Collis pursue the matter

in the proper forum against either or both of those business entities who may now be operating separately (since they were bequeathed separately) and possibly including the estate as a defendant for it to be determined in that forum which defendant(s) owe the \$20,000 due to Steve and CoraLee Collis, as the last payment due pursuant to the Sales Contract

Collis appeals.

II. Scope and Standard of Review.

Claims in probate are triable at law. *In re Estate of Crabtree*, 550 N.W.2d 168, 170 (lowa 1996). Therefore, our review is for correction of errors at law. *Id.* We are bound by the probate court's findings of fact if they are supported by substantial evidence. *Id.*

III. Analysis.

Collis challenges the portion of the probate court's ruling finding it lacked personal jurisdiction over Fez, Inc. to determine whether the company "ratified" the sales contract that Rothmeyer entered into. The court held:

The Court has no information as to how the Sale contract payments became the responsibility of Fez, Inc. or any other entity but it would appear possible that during his lifetime, the decedent did not find it necessary to keep the records separate on his two business entities and probably did not feel it necessary to distinguish between personal actions, if of a business nature, and the businesses. It appears probably by at least the second contract payment (made before his death) was paid from lowa Bail Bonds and the third payment (made after his death) was also paid from that source. The Sales Contract involved buying out the interest of a competitor in a bond business which would enhance the businesses in which he held an interest. To him, the payment from the funds of one of his businesses probably seemed the logical source.

It must be noted that the Claim has been filed against the Estate of William Rothmeyer but the evidence makes it uncertain that the obligation remained a personal obligation of the decedent and due from his estate. It appears more likely that the decedent treated the obligation under the Contract as a business obligation. The Balance Sheet of August 31, 2009, and the Income/Expense Report of September 4, 2009, appear to blend both companies into those reports and have shown a proration of expenses (including the contract payment) between the two entities.

The court then stated it lacked jurisdiction to enter an order involving Fez, Inc. d/b/a lowa Bail Bonds or Bill's Cash Bonds, and suggested Collis pursue the matter "in the proper forum against either or both of those business entities . . . and possibly including the estate as a defendant for it to be determined in that forum which defendant(s) owe the \$20,000 due" under the contract.

On appeal, Collis argues there is no evidence to support the probate court's ruling. He also argues no evidence was presented to show Rothmeyer

assigned the contract to his business. Collis contends that because he proved a valid claim and the estate failed to prove any of its affirmative defenses, the probate court should be reversed.

At the hearing, the written sales contract was admitted into evidence. Collis testified an attorney drew up the contract. Rothmeyer never indicated anyone else would owe the money under the contract. Collis testified that at least two of the payments he received under the contract came in the form of a check from Iowa Bail Bonds, signed by Rothmeyer. Maria Rothmeyer testified Fez, Inc.'s balance sheet dated August 31, 2009, shows accounts payable to Collis in the amount of \$40,000. She also testified the expenditure sheet for the business through August 31, 2009, shows \$13,333 (or two-thirds of the \$20,000) in expenses accrued for Collis.

We agree with the probate court that there is a fact issue regarding whether Rothmeyer or Fez, Inc. owed the debt under the contract to Collis. However, the probate court could not determine whether the debt was owed by Fez, Inc. requiring it to pay the final \$20,000 installment under the contract, because Fez, Inc. was not a party to the proceedings. *See Lonning v. Lonning*, 199 N.W.2d 60, 62 (Iowa 1972) ("Jurisdiction of the person in a civil case may be acquired by service of notice in the manner and form prescribed by law, or by defendant's general appearance."). Accordingly, we find no error.

AFFIRMED.