

IN THE COURT OF APPEALS OF IOWA

No. 3-548 / 12-1597

Filed June 26, 2013

**IN RE THE ESTATE OF
LEONARD LIDDLE, Deceased**

DUANE LIDDLE,
Contestant-Appellant,

vs.

DAVID LIDDLE, DIXIE ZEIEN, and DALE LIDDLE,
Proponents-Appellees.

Appeal from the Iowa District Court for Chickasaw County, James C. Bauch, Judge.

A contestant of a will appeals from the district court's grant of summary judgment in favor of the proponents. **AFFIRMED.**

Roger L. Sutton of Sutton Law Office, Charles City, for appellant.

Nathaniel W. Schwickerath of Schwickerath, P.C., New Hampton, for appellees.

Considered by Doyle, P.J., and Danilson and Mullins, JJ.

DOYLE, P.J.

Leonard Liddle's will was admitted to probate and his estate opened on July 7, 2011. Notices of probate and appointment of executors were mailed to the devisees, including Duane Liddle, in July 2011. Duane's notice was not mailed to his residential street address, 1406 4th Street SW. Rather, his notice was sent to his various businesses' street address, 1404 4th Street SW. Notice of probate and appointment of executors was also published in the local newspaper for two consecutive weeks from July 26 to August 2, 2011.

In April 2012, Duane filed his petition to set aside the will. In an effort to demonstrate the petition was timely filed, Duane asserted that notice of the estate proceedings was not mailed to his correct address, and "[a]t no time relevant was the notice mailed to [him] so that he would reasonably have been aware of the court proceedings." The proponents of the will subsequently filed a motion for summary judgment challenging Duane's petition as untimely pursuant to Iowa Code section 633.309 (2011), which requires will-contest actions be commenced within four months from the second date of publication of the notice, or within one month following mailing of the notice to all heirs and devisees "at such persons' last known address," whichever date is later. Among other things, the proponents asserted Duane receives mail at the 1404 address and that the address was an address reasonably calculated to provide actual notice to Duane. Duane resisted, denying he receives mail at the 1404 address.

The district court granted summary judgment in favor of the will's proponents. The court pointed out that Duane had operated three businesses from the 1404 address for a number of years and is the registered agent for

these businesses.¹ Further, the court noted that none of the notices sent to the 1404 address had been returned to the estate's attorney, even though Duane had been observed checking the 1404 mailbox, which is physically located in front of Duane's residence right next to his 1406 mailbox. The court also referenced an affidavit received from the county clerk of court affirming that Duane had been in the clerk's office "approximately two times per month" making copies of the estate file and reviewing matters since the inventory was filed in August 2011. The court concluded that the 1404 address was an address reasonably calculated to provide Duane actual notice, and Duane's petition challenging the will was therefore not timely filed. The court dismissed Duane's petition.

On appeal, Duane argues the district court erred in finding his businesses' address was an address reasonably calculated to provide him with actual notice of the probate proceedings. After a careful review of the evidence and material facts in the light most favorable to Duane, as well as granting him all reasonable inferences therefrom, we conclude Duane showed no genuine issue of material fact for trial. Finding no error on the part of the district court, we affirm the district court's ruling without opinion pursuant to Iowa Rule of Appellate Procedure 6.1203(a) and (d).

AFFIRMED.

¹ The 1404 address was also the registered office address and principal or home office address for each corporation.