

IN THE COURT OF APPEALS OF IOWA

No. 6-771 / 05-0978
Filed November 30, 2006

**IN THE MATTER OF THE ESTATE OF
ERIC CHRISTOPHER ERLAND,
Deceased,**

**PATRICIA SHEA ERLAND AND
JOHN SHEA ERLAND, Executors,
Appellants.**

vs.

**KRIS FAY, TERRI LUPEI
AND MICHAEL SHEPARD,
Appellees.**

Appeal from the Iowa District Court for Wapello County, James Q. Blomgren, Judge.

The executors appeal from a district court ruling sustaining the appellees' objections to the final report. **AFFIRMED.**

John R. Webber III of Harrison, Moreland & Webber, P.C., Ottumwa, for appellants.

Kenneth A. Duker of Breckenridge & Duker, P.C., Ottumwa, for appellees.

Considered by Vogel, P.J., and Miller and Eisenhauer, JJ.

VOGEL, P.J.

The co-executors of the estate of Eric Erland appeal from the district court's order sustaining the objections of the appellees to the final report. We affirm.

I. Background Facts and Proceedings.

Eric Erland died in October 2002. His will was admitted to probate on October 17, 2002, with his mother, Patricia Erland, and his brother, John Erland, appointed as co-executors. Eric executed his will in August 1997 and named his then wife, Joni Erland, as the sole beneficiary. In February 2001, Eric and Joni's marriage was dissolved, but Eric did not revise his will accordingly. As Eric and Joni had no children, the will provided that if Joni predeceased Eric, the homestead would pass to Joni's sister, Vicki Jo Shepard. The residue of Eric's estate would then pass in equal shares, one-half to Joni's parents, Alice and Norman Shepard, and one-half to Eric's mother, Patricia.

When it was understood that the dissolution revoked Joni's interest in Eric's estate according to Iowa Code section 633.271 (2001), the remaining beneficiaries, in hopes of negotiating a settlement, retained counsel and began discussing with the executors an alternate distribution of the property of the estate. An agreement was reached whereby Alice, Norman, and Vicki would disclaim their interests in the estate pursuant to Iowa Code section 633.704 so that Joni would receive the homestead and have \$50,000 paid by the estate on the mortgage. Vicki and Joni also disclaimed any interest they would receive resulting from the disclaimer filed by their parents, Alice and Norman.

On June 13, 2003, the named beneficiaries (Patricia, Vicki, Alice, and Norman) entered into a "Family Settlement Agreement" with Joni and the executors. The Agreement provided the following:

1. The homestead to be conveyed to Joni, with the estate to pay \$50,000 toward the mortgage due on the property and all remaining sums to be paid by Joni.
2. The estate to pay property taxes pro-rated to the date of Joni's possession.
3. Joni receives all remodeling building materials located at 915 E. Highland, Ottumwa.
4. Joni will pay the inheritance taxes on the Vanguard IRA, in the amount of \$3679.22.
5. Vicki, Alice and Norman Shepard shall each execute disclaimers to their interest in the estate before the expiration of nine months from the date of death (10/09/02).
6. Patricia will receive the balance of the assets of the estate, with the estate to pay for administration of the estate.

The initial report and inventory filed by the executors on March 24, 2003, listed the estate's gross assets at \$226,925.65. The Iowa inheritance tax return, with the family settlement agreement attached, was prepared on June 17, 2003, by the attorney for the estate, John R. Webber III. It reported a gross estate of \$226,925.65 with allowable deductions of \$112,400.34, leaving a net estate for distribution of \$114,525.31. Joni and Patricia were the only persons listed on this return as "beneficiaries." Joni's share was \$36,792.19 and, as a non-relative, the inheritance tax was calculated at \$3679.22. Patricia's share was \$77,733.12 and, as Eric's mother, no inheritance tax was due.

Correspondence from the Iowa Department of Revenue to Webber in September 2003 regarding the return indicated any disclaimed property by Vicki, Alice, or Norman would pass to their heirs, requiring additional taxes depending on the existence and number of those heirs. Webber subsequently wrote

attorney Robert Breckenridge, who represented Vicki, Joni, Norman, and Alice, informing him of the department's position and requesting information on any and all heirs of Vicki, Alice, and Norman, and advising that this would affect the inheritance tax due. Webber also recommended amending the "Family Settlement Agreement" to include any children of Alice and Norman.

An amended Iowa inheritance tax return was filed on May 7, 2004, which added Alice and Norman's three other children, Michael Shepard, Kris Fay, and Terri Lupei, the objectors and appellees, each with a \$10,836.86 share and inheritance tax of \$1083.69 due on each share. Patricia's share dropped to \$32,510.59. The total allowable deductions shown had increased to \$125,112.29 leaving the net estate at the amended value of \$101,813.36. There was also a penalty of \$162.56 and interest of \$162.60 for the late filing. In July 2004, the district court approved the application for executor's fees to Patricia of \$4658.21, ordinary fees to attorney Webber of \$4658.21, as well as extraordinary attorney fees of \$5569.67. Although they received notice of the application for fees, neither Michael, Kris, nor Terri raised any objections to the application.

The executors filed the final report for the estate on March 4, 2005, to which Michael, Kris, and Terri filed an objection. The objections consisted of the following five points:

1. That Kris Fay, Terri Lupei, and Michael Shepard are heirs at law, based upon certain disclaimers filed in this matter.
2. That the attorney for the executor originally incorrectly filed an estate tax return in which Kris Fay, Terri Lupei, and Michael Shepard were all left off as receiving shares. That Mr. Webber failed to even notify heirs prior to the required filing of the return.
3. That because of the errors of Mr. Webber in failing to include them, certain penalties were required to be paid [to] the State of Iowa.

4. Further, Mr. Webber did not include the deductions for his extraordinary fees which [were] more than \$5000 over \$5500 additional to be claimed on the tax return. Failure to do so artificially inflated the taxes on the return as well.
5. As such, the share of Kris Fay, Terri Lupei, and Michael Shepard has been decreased due to Mr. Webber's failing to take action to notify them correctly as well as failing to properly prepare the estate tax return.

WHEREFORE, the claimants request that the amounts to be distributed to them be changed and increased to more properly represent what they should have received but for the errors of Mr. Webber.

Following a contested hearing, the district court issued its ruling on April 20, 2005, in favor of the objectors. The court found that Kris, Terri, and Michael became "beneficiaries of the estate by reason of the disclaimers signed by [their parents, Alice and Norman Shepard]." The court also found that as beneficiaries of the estate, Kris, Terri, and Michael were not bound by the Family Settlement Agreement, as they were not party to the agreement. The court sustained the objections to the final report in their entirety, and ordered the "distributions to the heirs of the estate should be adjusted accordingly." The executors, Patricia and John, appeal from this ruling.

II. Scope of Review.

The matters before us were resolved in probate proceedings for final settlement of the estate, and our review is therefore de novo. Iowa Code § 633.33 (2001); *In re Estate of Lamb*, 584 N.W.2d 719, 722 (Iowa Ct. App. 1998).

III. The Settlement Agreement and Disclaimers.

The executors appeal the district court's finding that the objectors are not bound by the Family Settlement Agreement and therefore request this court to enforce the agreement "as written," which would give to Patricia, the "balance of

the assets” or the residual estate of \$77,733.12. Because the objectors took their parents’ disclaimed shares of one-half of the residual estate, the amount remaining for Patricia’s share dropped to \$36,792.19. The objectors reply that they should each receive the amount set forth in the amended inheritance tax return, \$10,836.86, minus the tax due on each share, \$1083.69.

In Iowa the beneficiaries under a will may enter into an agreement, “to disregard the instrument and have the estate distributed as intestate or in any other manner they see proper.” *In re Swanson’s Estate*, 31 N.W.2d 385, 389 (Iowa 1948). Under the law in effect at the time Eric’s estate was admitted to probate, Iowa Code section 633.704(3)¹ provided that property disclaimed descends “as if the disclaimant has died prior to the date of the transfer,” making any person claiming under the disclaimant an heir of the disclaimant. In this case, the beneficiaries attempted to craft a settlement agreement using disclaimers to accomplish their goals of an alternate distribution of the assets of the estate.

Contrary to the district court ruling, the objectors, Kris, Terri, and Michael were not “beneficiaries under a will” and, therefore they were not, nor should they have been, party to the settlement agreement. Alice and Norman were proper parties to the agreement, as they were beneficiaries under the will. Pursuant to the agreement, Alice and Norman disclaimed their interest, which by statute resulted in their heirs, that is their five children, receiving their disclaimed interest. Iowa Code § 633.704(3). Joni and Vicki followed through by disclaiming the

¹ This code chapter has since been replaced by the Uniform Disclaimer of Property Interest Act found at Iowa Code chapter 633E.

interest they received as heirs of their parents; Kris, Terri, and Michael did not. Therefore, Kris, Terri, and Michael, as children of the disclaimants, Alice and Norman, took not as heirs of Eric but as heirs of their parents, receiving their disclaimed interest. Alice and Norman's disclaimed one-half interest in the residuary of the estate passed in equal shares to Kris, Terri, and Michael. The three children each received, therefore, one-third of one-half of the residuary of the estate, and Patricia's share is also one-half of the residual estate. Thus, the amended inheritance tax return correctly reflected the proportionate shares.

The remaining findings by the district court that "the objections to the final report should be sustained" are not on appeal, and we do not address them.

AFFIRMED.