

**IN THE COURT OF APPEALS OF IOWA**

No. 7-316 / 06-0511

Filed June 27, 2007

**IN THE MATTER OF THE ESTATE OF  
MARLYS SCHARES, Deceased,**

**DARYL SCHARES,**  
Petitioner/Appellant,

**And Concerning**

**JERILYN E. SCHARES, Executor,**  
Respondent/Appellee.

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Appeal from the Iowa District Court for Buchanan County, George L. Stigler, Judge.

The petitioner appeals from the district court's order denying his objections to the proposed final report of the estate. **REVERSED AND REMANDED.**

Michael Pedersen, Waterloo, for appellant.

John Wood and Theresa Hoffman of Beecher, Field, Walker, Morris, Hoffman & Johnson, P.C., Waterloo, for appellee.

Heard by Sackett, C.J., and Vogel and Miller, JJ.

**VOGEL, J.**

Daryl Schares appeals from the district court's order that overruled his objections to the executor's final report in the estate of his deceased mother, Marlys Schares, and his request for a trial on the alleged debt he owed to the estate. Because we conclude that the executor failed to sustain her burden of proof on the final report, we reverse the district court's order and remand.

**I. Procedural Background.**

The estate of Marlys Schares was opened following her death in June 2004. Her will provided, in essence, that her four children (Daryl, Ricky, Jerilyn and Martin) were to receive equal portions of her estate. Jerilyn and Martin were appointed to serve as co-executors. An inventory of assets was filed on January 24, 2005, with copies sent to all beneficiaries. Among other things, the inventory asserted that Daryl was indebted to the estate in an "undetermined value not to exceed \$70,601.04." Not agreeing with this assertion and claiming self-dealing by Jerilyn and Martin, Daryl filed an application on October 12, 2005, to have Jerilyn removed as executor.<sup>1</sup> After some continuations, the application, along with his request for an accounting, were set for trial to begin on February 23, 2006. On February 3, 2006, Jerilyn filed a proposed final report and distribution of assets, although the report was not mailed to Daryl's attorney until February 14 or 15. Daryl actually learned of the final report at a pretrial conference on the 14th, at which time the district court also set the final report to come on for hearing on February 23, in conjunction with a hearing on Daryl's previously filed application to remove the executor and application for accounting. The district

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<sup>1</sup> Martin resigned as executor in March 2005.

court ruled: “The application for removal of executor can better and more effectively be dealt with as objections to the proposed final report. Hearing shall remain as scheduled for February 23, 2006 at 9:00 am.”

Daryl objected to the final report, contending that despite his repeated requests, the executor had failed to provide documentation to substantiate the alleged debt, that he had not had the benefit of conducting formal discovery on the debt, and that a hearing on the final report set on short notice would not provide an adequate forum to address these issues.

At the February 23 hearing, Daryl strenuously argued that it was improper to go forward at that time with a hearing on the final report and proposed distribution. He requested that a full trial be allowed on the final report, including the executor’s assertion of Daryl’s debt owed to the estate so that the parties could benefit from formal discovery. The executor wished to proceed on the matters pending before the court, due to her desire that the estate be promptly closed. The district court agreed, denied Daryl’s request for a continuance, and proceeded to request that Daryl testify as to how he repaid monies he had borrowed from his mother. The information presented by the executor at hearing<sup>2</sup> to support Daryl’s alleged debt as shown in the final report were as

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<sup>2</sup> Documentation of the \$5000 loan in 1995 is not part of the record on appeal. Two checks from 1975 in the amounts of \$2000 and \$28,000 that the executor used at hearing were filed with the Clerk of the Supreme Court in a Motion to Supplement the Appendix, following oral arguments and submission of the case. While the two checks illuminate the parties’ arguments and the district court ruling, we note that no exhibits relied upon by the executor at hearing, including these two checks, were actually offered and received into evidence. However, after this appeal was filed, and a limited remand was ordered, the district court did state that it considered in its ruling the “two checks upon which the executor bases her claim totaling \$30,000,” “the reference to \$945,” and “the notation from the Fairbank State Bank making reference to a notation of the debt being paid.”

follows: (1) a check dated October 1975 to Mills Realty for \$2000 signed by Daryl's father, Kenneth Schares; (2) a 1975 check from Kenneth Schares to Eli A. Bontrager for \$28,000; (3) a 1984 financial statement by Marlys listing a debt owed by Daryl of \$30,000; (4) reference to a 1995 loan of \$5000 Marlys paid; (5) a \$33,331.04 loan made to Marlys in 1995 from Security State Bank on Daryl's behalf;<sup>3</sup> and (6) a March 2001 check to Daryl for \$125 for "C & S wedding" referring to Daryl's son, Chris. Daryl attempted to show, through handwritten notes from 2001 and 2002 on a ledger kept by Marlys, that only \$945 remained unpaid. He also asserted, without success, both the statute of limitations and statute of frauds as defenses to the alleged debts, along with noting his father, Kenneth Schares, died in 1984 with no listing of a debt by Daryl as an asset of Kenneth's estate.

After a brief hearing,<sup>4</sup> during which only Daryl testified, the district court found Daryl was not credible and that he had failed to disprove the debt. The district court reasoned, "[W]hat I'm looking for is not litigation by way of them having to prove that you owe whatever it is they maintain you owe," and concluded, "If [Daryl's] dissatisfied with their accounting, he has to come in and say, this is wrong and these are the reasons why they are wrong. And in this instance, he has not met that burden." The final report and proposed distribution were approved. Daryl filed a motion to enlarge the court's findings under Iowa Rule of Civil Procedure 1.904(2), which the court denied without hearing.

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<sup>3</sup> The 1995 loan was for an original amount of \$29,000 at 10.5% interest and the note is marked "paid" as of July 16, 1997, by an unknown signatory.

<sup>4</sup> From the court reporter's certification, it appears the hearing lasted two hours.

## II. Scope of Review.

We conduct a de novo review of a hearing on a final report and objections thereto. Iowa Code § 633.33 (2005); *Estate of Randeris v. Randeris*, 523 N.W.2d 600, 604 (Iowa Ct. App. 1994).

## III. Burden of Proof and Substantial Evidence.

Daryl argues the district court erroneously placed the burden on him to disprove the alleged debt rather than placing the burden on the executor to prove the debt as part of the final report. He further asserts that the documentation available at the hearing does not support the debt as alleged, that is, in excess of \$70,000. We begin by underscoring that the burden of sustaining the final report is on the executor or administrator of the estate, *In re Roehlke's Estate*, 231 N.W.2d 26, 29 (Iowa 1975), and then the objector must be able to prove an affirmative allegation, e.g. the debt alleged has been paid. *In re Carson's Will*, 227 Iowa 941, 956, 289 N.W. 30, 37 (Iowa 1939). We find the case of *In re Estate of Bruene*, 350 N.W.2d 209, 213 (Iowa Ct. App. 1984) instructive as to the burden of proof and by contrast, what was lacking in the present case. In *Bruene*, the executor not only put forth evidence by witnesses and exhibits in the face of objections to a final report and request for accounting, but also had the benefit of previous litigation regarding some of the same matters. *Id.* at 213-14.

We stated:

The executor and his nephew, Douglas Putensen, who was the tenant on the farm during the period following the death of the decedent, testified that they had properly accounted for all rents owing to the estate and all other moneys due or owing from the rental of the farm . . . . In response to the evidence presented by

the estate, the protestors offered no meaningful testimony of persons with knowledge of the facts or exhibits which significantly raised a question as to the accounting of the executor for rentals due.

The general rule is that, after objections are filed, the personal representative generally has the burden of proof to sustain all matters raised in the Final Report. The trial court determined the executor had met his burden of proof on this issue, and we agree, even though appellants assert that the executor and his tenants could not remember *all* of the details of a rental agreement or crop acreages or yields that occurred some seven years before the hearing on the final agreement. We affirm the trial court on this issue.

*Id.* at 214 (citation omitted).

In this case, only scant information was presented by the executor, including the filing of the final report. The executor clearly held the burden to prove all information and allegations in the final report, including proving the existence of the disputed debt. From the record, it is apparent the executor was ready to have these matters settled and the estate closed.<sup>5</sup> Upon our de novo review of the record before us, we conclude the executor failed to prove the existence of the unpaid debt, as the age of the documents, the source and recipient of funds on two of the checks (Kenneth Schares to Mills Realty and Kenneth Schares to Eli A. Bontrager), cryptic notations and even notes marked “paid” all undermined any legitimacy of the debt asserted in the final report. Furthermore, most of these “documents” were not made part of the district court record (other than passing references at the hearing) or in the record on appeal. We conclude that the executor did not meet her burden of proof as to Daryl’s

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<sup>5</sup> Counsel for the executor stated at oral argument before this court that the executor was satisfied with the information presented at hearing as sufficient to meet her burden of proof.

alleged debt of \$70,000, as reduced to \$50,000 in the final report. In testifying, Daryl did admit to having borrowed money from his mother over the years, but stated that all was repaid except for \$945. There was an exhibit confirming this figure in Maryls's handwriting from 2002 which was part of the record on appeal.

We therefore reverse the district court's order approving the final report as submitted at hearing and remand for entry of order, showing a correction to the final report to reflect Daryl's debt to the estate to be \$945 and the same as an offset of his distributive share; we direct the district court to then proceed with an order approving the final report and authorizing distribution of assets.<sup>6</sup>

**REVERSED AND REMANDED.**

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<sup>6</sup> Daryl also asserts that he did not receive adequate notice of the hearing on the final report, and the resulting brief hearing was not adequate to address the issues pending. We agree as notice was clearly not within the parameters of the statute. Iowa Code § 633.478 (2005).