

IN THE COURT OF APPEALS OF IOWA

No. 9-1068 / 09-1198

Filed April 8, 2010

MARY JO ESCHER,
Plaintiff-Appellant,

vs.

ESTATE OF MARY LOUISE ESCHER,
Defendant-Appellee.

**IN THE MATTER OF THE ESTATE OF
MARY LOUISE ESCHER, Deceased,**

MARY JO ESCHER,
Intervenor-Appellant.

Appeal from the Iowa District Court for Washington County, Michael R.
Mullins, Judge.

Mary Jo Escher appeals a district court decision that the real estate
contract she had with decedent should be forfeited. **AFFIRMED.**

Timothy K. Wink of Schweitzer & Wink, Columbus Junction, for appellant.

Daniel P. Kitchen, Washington, for appellee.

Considered by Eisenhauer, P.J., Potterfield, J., and Huitink, S.J.*

*Senior Judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

HUITINK, S.J.**I. Background Facts & Proceedings**

In 2004, Mary Louise Escher entered into a real estate contract to sell her home to her sister-in-law, Mary Jo Escher. Mary Louise retained a life estate in the home. Mary Jo made payments under the contract. Mary Louise died on May 5, 2005.

Mary Louise had made a will that provided for the payment of her just debts, including the expenses of her last sickness and burial. The remainder of her property was given to Mary Jo. Roger Escher, the husband of Mary Jo and brother of Mary Louise, was appointed as the executor. Mary Jo quit making payments on the real estate contract after Mary Louise died based on her belief the property transferred to her under the terms of the will.

Roger filed a petition for probate of the will. On June 29, 2005, Health Management Systems, Inc. (HMSI), under the authority of the Iowa Department of Human Services, filed a claim pursuant to Iowa Code section 249A.5(2) (2005) for reimbursement of medical assistance paid for decedent in the amount of \$10,459.29. On October 13, 2005, Roger and Mary Jo filed a claim in probate for \$54,688.30 for services rendered to decedent during her life and funeral expenses.¹

¹ After Mary Louise became ill, Mary Jo and Roger performed services for Mary Louise such as going to the grocery store, preparing meals, doing laundry, and performing yard work. They also spent \$6681.30 for Mary Louise's funeral.

The district court permitted the claim by HMSI in the amount of \$10,563.39, plus interest.² Roger, as executor, filed an interlocutory report suggesting that the property subject to the real estate contract should be abandoned by the estate to the purchaser, Mary Jo. The district court then appointed Washington State Bank as a special executor for the limited purpose of determining issues relating to the real estate sold by Mary Louise to Mary Jo.

After a hearing, the district court determined that under section 249A.5(2) Mary Louise's estate was liable for medical assistance benefits paid on her behalf. Also, her life estate interest in the home was an asset that should be included in the probate estate. The court placed the claims against the estate in the following order of priority: (1) the claim of HMSI against Mary's Louise's life estate interest; (2) the claim for funeral expenses; and (3) Roger and Mary Jo's claim for services rendered.

On August 26, 2008, the estate, through the special executor, filed a notice of forfeiture of real estate contract asking to have the contract forfeited because Mary Jo had not made payments after May 2005. Mary Jo filed a separate action against the estate asking to have the estate execute a deed conveying the property to her because the property had automatically transferred to her at the time of Mary Louise's death.

The two matters were combined for hearing. The district court concluded that the statutory lien under section 249A.5(2)(c) had priority over the inheritance interest of Mary Jo. "Consequently, Mary Jo's inheritance interest did not merge

² HMSI presented evidence increasing its original claim of \$10,459.29 by \$104.10. The district court approved the amount of \$10,563.39.

with her interest as buyer under the real estate contract.” The court concluded Mary Jo was obligated to make payments on the contract for the benefit of the lien holder, HMSI. The court declared the real estate was owned by the estate, and Mary Jo’s interest was forfeited. Also, the interest of the tenant, Tim Escher, son of Roger and Mary Jo, was forfeited.

Mary Jo filed a motion pursuant to Iowa Rule of Civil Procedure 1.904(2). The district court noted that under section 633.350, property passes to a person under a decedent’s will at the time of the decedent’s death, but the property is still subject to possession by the personal representative to pay the decedent’s debts. The court also found section 249A.5(2) was a more specific statute that controlled over the general provisions of section 633.350. Mary Jo appeals the decision of the district court.

II. Standard of Review

Under section 633.33, this matter was tried in equity. We review equitable matters de novo. *In re Estate of Serovy*, 711 N.W.2d 290, 293 (Iowa 2006). In equity cases we give deference to the factual findings of the district court, especially when considering the credibility of witnesses, but are not bound by them. *Id.*

III. Merits

Mary Jo contends the title to the property passed to her instantly at the time of Mary Louise’s death, based on the terms of the will. She states that because she became the owner of the property, the contract merged into her ownership, and the contract no longer existed. *See In re Estate of Herring*, 265

N.W.2d 740, 742 (Iowa 1978) (“The question of whether there is a merger of estates is largely a matter of intention of the parties.”). Mary Jo claims the special executor, therefore, was unable to forfeit the contract, as it no longer existed.

Generally, a person instantly receives title to property under a will at the time of the decedent’s death. *In re Estate of Tolson*, 690 N.W.2d 680, 683 (Iowa 2005). This rule, however, is “subject to the possession of the personal representative . . . and to the control of the court for the purposes of administration, sale, or other disposition . . . and such property . . . shall be chargeable with the payment of debts and charges against the estate.” Iowa Code § 633.350. “[W]hile title to real property passe[s] instantly to the devisee the property [is] nevertheless in the possession of the personal representative of the estate and subject to sale or other disposition.” *In re Estate of Ragan*, 541 N.W.2d 859, 861 (Iowa 1996) (citing *DeLong v. Scott*, 217 N.W.2d 635, 637 (Iowa 1974)).

Under section 249A.5(2), the provision of medical assistance, under the terms of the statute, “creates a debt due the department from the individual’s estate for all medical assistance provided on the individual’s behalf, upon the individual’s death.” Medicaid benefits provided by the Iowa Department of Human Services create a debt due to the department at the time of the recipient’s death. *In re Barkema Trust*, 690 N.W.2d 50, 53 (Iowa 2004).

The debt is payable from the decedent’s estate, which includes, “interests in jointly held property, retained life estates, and interests in trusts.” Iowa Code §

249A.5(2)(c); *Barkema Trust*, 690 N.W.2d at 53. A life estate is an interest separate and distinct from the remainder of the property. *In re Estate of Laughead*, 696 N.W.2d 312, 316 (Iowa 2005). A decedent's life estate should be included in the probate estate for purposes of satisfying a debt to the department under section 249A.5(2). *Id.*

Based on section 249A.5(2), there is a debt due from Mary Louise's estate for medical assistance. Mary Louise retained a life estate in the property that was the subject of the real estate contract with Mary Jo. That life estate is included in the probate estate for purposes of satisfying the debt. See Iowa Code § 249A.5(2)(c). We agree with the district court's conclusion that Mary Jo did not have complete ownership of the property as the result of merger because under the action of section 249A.5(2)(c), Mary Louise's life estate interest remained available as an asset to satisfy the debt for medical assistance. The real estate contract did not merge into Mary Jo's interest in the property under the terms of the will.

We affirm the decision of the district court.

AFFIRMED.