

**IN THE COURT OF APPEALS OF IOWA**

No. 9-705 / 09-0031  
Filed October 7, 2009

**IN RE THE MATTER OF THE ESTATE  
OF ORVILLE M. NELSON, Deceased,**

**U.S. BANK, N.A., Successor Executor  
in the Estate of Orville M. Nelson,  
Executor-Appellant.**

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Appeal from the Iowa District Court for Allamakee County, Monica L. Ackley, Judge.

An executor appeals the district court's order denying its petition to reopen the estate. **APPEAL DISMISSED.**

James E. Goodman Jr. and Joshua P. Weidemann of O'Connor & Thomas, P.C., Dubuque, for appellant.

W. Richard White of Morrow & White, Waukon, for appellee.

Considered by Sackett, C.J., and Eisenhauer and Doyle, JJ.

**DOYLE, J.**

An executor appeals the district court's order denying its petition to reopen the estate. Upon our review, we dismiss the appeal.

***I. Background Facts and Proceedings.***

Orville M. Nelson died on September 20, 2001, and his will was admitted to probate. The will nominated attorney James D. Bristol to serve as executor of the estate, and he subsequently designated himself as attorney for the estate. After a disagreement with Orville's siblings over the sale of some of the estate's assets, Bristol voluntarily withdrew from both roles. The district court then appointed Orville's brother, Arthur Nelson, and James Rathbun as successor executors, and Robert J. Cowie was designated as the estate's attorney.

In August 2002, the estate's executors filed their final report, which stated among other things that "[a]ll statutory requirements relating to taxes have been fully complied with and Arthur Nelson individually has agreed to be fully responsible for any unpaid taxes and such agreement is filed with this report." On December 23, 2002, the court filed its order approving the final report and discharging personal representatives, noting that the only actions remaining to be filed were a federal estate tax closing letter and an inheritance tax clearance from the Iowa Department of Revenue and Finance. The court further noted that Arthur agreed to be responsible for any and all death taxes and such agreement was on file, and ordered that the estate file be closed automatically upon the filing of an estate tax closing letter and inheritance tax clearance.

In April 2004, Arthur filed a petition to reopen the estate and for removal of executor and attorney, alleging malpractice on the part of Cowie. On May 17,

2004, the court entered its order on Arthur's petition finding that Orville's estate was never technically closed because the federal estate tax letter was never filed in the estate. The court released Cowie from his obligation as attorney for the estate and ordered that a new fiduciary and fiduciary's attorney be appointed. U.S. Bank was appointed successor executor, and James Goodman was appointed as the fiduciary's attorney.

In December 2006, the work in Orville's estate was nearing completion. Goodman had previously been allowed \$19,000 in attorney fees. U.S. Bank, after a two-and-one-half year involvement, requested an executor's fee of \$5000 and Goodman requested an additional \$106,916.04 in attorney fees, which included \$1016.04 of costs. After hearing, the district court awarded Goodman \$30,430 as additional attorney fees, and \$374.88 in costs. U.S. Bank filed a motion to reconsider requesting the court to approve the successor executor's fees and to redetermine the amount of attorney fees and costs awarded. After hearing, the district court denied the motion for reconsideration in its entirety. U.S. Bank appealed, and the appeal was transferred to this court for review.

On April 9, 2007, the district court, sua sponte, filed an order setting the matter for final hearing for closure, noting the estate had been open for a number of years. U.S. Bank filed an objection to closure of the estate, stating among other things that final fiduciary income tax returns had not been filed and that attorney and executor's fees were on appeal and had not been finalized. On June 25, 2007, the district court entered its order closing the estate. The order stated:

The court has reviewed this file and has determined that all that needs to be done at the present time in order to continue to administer this proceeding is complete. There is no further reason to keep this matter open. If the appeal pertaining to the attorney's fees and executor fees are further resolved by appeal, the matter can be reopened for purposes of approval of fees in the future.

On November 29, 2007, we filed our opinion in the appeal concerning attorney and executor's fees, affirming in part and reversing in part the district court's order, and remanding with the instructions. See *In re Estate of Nelson*, No. 07-0131 (Iowa Ct. App. Nov. 29, 2007). We instructed that the district court enter an order approving Goodman's attorney fee of \$102,516 and approving U.S. Bank's requested \$5000 executor's fee. *Procedendo* issued December 27, 2007. On April 30, 2008, the district court filed an order pursuant to our opinion and approved for payment the attorney and executor's fees.

On October 16, 2008, U.S. Bank filed a petition to reopen Orville's estate and appoint an executor. The petition stated:

The executor fees and attorney fees have not been paid yet by Arthur Nelson. Arthur Nelson agreed to pay the fees of [U.S. Bank and Goodman]. Fees have not yet been paid. As such, since this necessary act remains unperformed the lack of payment of fees is the basis for proper cause for the estate to be reopened. Once the estate is reopened, the real estate . . . will be transferred back into the estate until such time as the fees are paid. The real estate was transferred to Arthur Nelson on July 30, 2002 prior to the current executor and attorneys being involved in the estate.

On December 5, 2008, the court entered its order denying the petition to reopen the estate. U.S. Bank appealed. It contends the district court erred and abused its discretion in denying the petition to reopen Orville's estate.

## **II. Scope and Standards of Review.**

Actions to reopen an estate are tried as equitable actions. *In re Estate of Lynch*, 491 N.W.2d 157, 159 (Iowa 1992) (citing Iowa Code § 633.33 (1989)).

Therefore, our scope of review is de novo. *Id.*; see also Iowa R. App. P. 6.907.

## **III. Discussion.**

Iowa Code section 450.58 (2001)<sup>1</sup> provides:

The final settlement of the account of a personal representative shall not be accepted or allowed unless it shows, and the court finds, that all taxes imposed by this chapter upon any property or interest in property that are made payable by the personal representative and to be settled by the account, have been paid, and that the receipt of the department of revenue and finance for the tax has been obtained as provided in section 450.64. Any order contravening this section is void.

In its December 23, 2002 order approving the final report and discharging personal representatives, the court noted that there remained to be filed an inheritance tax clearance. The “Interim Report” filed November 5, 2003, stated an “Iowa Inheritance Tax Clearance” had been filed.<sup>2</sup> On June 25, 2007, the district court entered its order closing the estate.

Upon our de novo review of the record, we find no inheritance tax clearance in the court file and one is not referenced anywhere on the clerks’ docket pages. Under the record before us, we cannot conclude the applicable provisions of Iowa Code section 450.58 were met as there is no showing that a receipt for inheritance taxes was obtained from the department of revenue.

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<sup>1</sup> Iowa Code section 450.58 has since been amended, but none of the amendments substantively change the section as to any issue applicable to this appeal.

<sup>2</sup> It is noted that an “Iowa Income Tax Certificate of Acquittance” was filed contemporaneously with the “Interim Report.” That certificate is a duplicate of one filed previously on December 17, 2002.

Therefore, under section 450.58, we are compelled to find the June 25, 2007 closing order to be void. Thus, never having been validly closed, the estate remains open. Consequently, the bank's petition to reopen the estate is moot.

The appeal is dismissed.

**APPEAL DISMISSED.**