IN THE COURT OF APPEALS OF IOWA

No. 3-479 / 12-1998
Filed August 21, 2013

BETTY L. SCHOBER,
Intervenor-Appellee,

vs.

CAROL S. SCHOBER, Fiduciary of the ESTATE OF WILLIAM R. SCHOBER,
Executor-Appellant.

Appeal from the Iowa District Court for Floyd County, James M. Drew, Judge.

An executor appeals from a district court order allowing a claim in probate against an estate for past and future alimony. **AFFIRMED.**

Russell Schroeder Jr. of Schroeder Law Office, Charles City, for appellant.

Thais Ann Folta of Elwood, O'Donohoe, Braun & White, L.L.P., Cresco, for appellee.

Considered by Vogel, P.J., and Vaitheswaran and Bower, JJ.

VAITHESWARAN, J.

Betty Schober was awarded alimony for her lifetime, to continue after her ex-spouse William's death. She successfully enforced that claim in probate. On appeal, we are asked to decide whether William's post-death alimony obligation should have been "offset" by social security benefits paid to Betty "as a direct result" of William's death. For reasons, set forth below, we do not reach the issue.

I. Background Facts and Proceedings

William and Betty Schober married in 1955 and divorced in 1981. The district court ordered William to pay Betty alimony of $1100 per month. The court further provided: "Said alimony payments shall be terminated by the death or remarriage of [Betty]. In the event of the death of [William] while his alimony obligation is continuing, the unmatured alimony obligation herein for the remaining lifetime of [Betty] shall constitute a lien and claim against William's estate." This court affirmed the provisions of the decree without opinion in *In re Marriage of Schober*, No. 2-66951, 325 N.W.2d 417 (Iowa Ct. App. May 25, 1982).

William later married Carol Schober. He died in 2010. Betty did not remarry. She testified by deposition that William paid her alimony until his death. She stated that, while he sometimes got behind in his payments, he was current as of his death.

Carol filed a petition to probate William's will. Following delayed notification of the probate proceeding,[1] Betty filed a claim seeking $18,700 in

[1] The district court found that Betty was not timely notified of the estate proceeding even though her address was reasonably ascertainable.

alimony that was due and owing after William's death, together with $1100 per month going forward. At a hearing on the claim, the estate presented evidence of social security benefits Betty received before and after William's death. The estate sought an offset of the post-death benefit amount against the alimony obligation.

The district court first concluded that, "[g]iven the clear, albeit unusual, alimony provision in the dissolution decree . . . the estate is obligated to continue making the payments to Betty." The court then proceeded to the estate's argument in favor of an offset. The court ruled as follows:

> The estate argues that the payment amount should be reduced because a "credit" should be allowed for the increase in Betty's social security benefits resulting from Mr. Schober's death. Although there are child support cases that support the estate's argument, there are no such cases involving alimony. It is important to note that the pertinent child support cases were modification actions. It is possible that a similar rule would apply to the type of alimony award involved in this case. However, if it does it must be addressed in an action for modification within the dissolution action.

The court allowed Betty's claim and ordered it paid by the estate. This appeal followed the denial of Carol's motion for expanded findings and conclusions.

II. Analysis

On appeal, Carol contends the district court erred in rejecting her request for an offset. *See* Iowa Code § 633.33 (2011); *Estate of Voelker*, 252 N.W.2d 400, 402 (Iowa 1977) (reviewing for errors of law). She notes that Betty "received a substantial increase" in her monthly social security payment following William's death ~~h $694~~ to $1481 ~~a~~nd the difference of $787 per month, if offset against the alimony obligation of $1100 per month would reduce the obligation to $313. She cites case law in the child support context that has approved similar offsets. *See*

In re Marriage of Belger, 654 N.W.2d 902, 906 (Iowa 2002) (determining social security retirement dependency benefits should be credited against a parent's child support obligation); *In re Marriage of Hilmo*, 623 N.W.2d 809, 813 (Iowa 2001) (concluding social security disability dependency benefits should be considered part of the disabled parent's income for purposes of calculating child support); *Newman v. Newman*, 451 N.W.2d 843, 844 (Iowa 1990) ("The rule in Iowa is that a child support award may be offset by social security benefits during the period in which the benefits are received.").

Betty responds that Carol is "barred from seeking an offset" because she "failed to comply" with Iowa Code section 633.445, which requires the personal representative to "*plead all offsets against the claim*." Iowa Code § 633.445 (emphasis added). Betty is correct that Carol did not plead the exact amount of the offset she was requesting, but she did allege the amount due was "incorrectly calculated." We conclude the allegation was sufficient to preserve the offset claim.

Still, Carol must overcome another significant hurdle, the fact that William never sought to modify the alimony award in the dissolution proceeding. As noted, the dissolution decree unambiguously authorized a lien against William's estate in the amount of $1100 per month for Betty's life. *See In re Estate of Jones*, 434 N.W.2d 130, 131 (Iowa Ct. App. 1988) ("The decree must clearly provide for the continuation of alimony beyond the obligor's death before the court may hold the estate liable for those payments."). This provision became a final judgment unless modified. *See Matson v. Matson*, 173 N.W. 127, 133-134 (Iowa 1919) ("Appellants' next contention is that it is necessary that the

judgment must be final, and that the judgment and decree for alimony is not final in this case, because it is subject to change, under Code, § 3180. It seems to us it is a sufficient answer to this to say that it is final until modified, that no change has been made, and, further, that before there can be a change of the decree, there must be a change in the circumstances affecting the situation and condition of the parties."). William applied to modify the provision based on circumstances other than Betty's receipt of social security benefits, an application that was denied. *See In re Marriage of Schober*, 379 N.W.2d 46, 48 (Iowa App. 1985). There is no indication in our record that he applied to modify the alimony award based on Betty's receipt of social security benefits, despite the fact Betty began receiving those benefits before his death.[2] Absent a modification of the alimony award in the dissolution action, the award stood as a final enforceable judgment. *See Belger*, 654 N.W.2d at 909 (observing that with respect to child support, "a retired parent must seek formal modification of his or her child support order with the district court," and reasoning that "[r]equiring an obligor parent to seek a formal modification of the support obligation preserves certainty of judgments"). The district court did not err in enforcing that judgment as written.

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[2] Had William died after filing an unresolved modification application on this ground, the estate could have been substituted as party. *See Oliver v. Oliver,* 248 N.W. 233, 234 (Iowa 1933) ("If a decree of divorce has not been entered prior to the death of a party, none can ever be entered, but this is ordinarily the limit to which the action is abated by death. This court is committed to the rule that the death of a party will not prevent it from considering an appeal in an action for divorce in so far as property rights and the custody of children are affected by the decree from which the appeal is taken."); *In re Marriage of Maifield*, No. 03-0326, 2004 WL 61108, at *1 n.1 (Iowa Ct. App. Jan. 14, 2004) (noting that the Iowa Supreme Court substituted estate for spouse who died following trial to contest post-death alimony provision and affirming "clearly expressed" provision); *accord Frazier v. Frazier*, 455 So. 2d 883, 884 (Ala. Civ. App. 1984) (noting that following the post-trial death of paying spouse, executor was substituted as a party on appeal).

In reaching this conclusion, we make no comment on whether, under appropriate circumstances, an ex-spouse who pays spousal support might be entitled to an offset or credit for social security benefits derived from the paying spouse's earnings. *See*, *e.g.*, *Spalding v*. *Spalding*, 691 So. 2d 435, 439 (Miss. 1997) (approving chancellor's credit of social security benefits against alimony as "an alternate source of income out of which alimony obligations are permitted be satisfied"); *Serowski v*. *Serowski*, 672 S.E.2d 589, 593 (S.C. Ct. App. 2009) (finding ex-wife's "increase in income due to her receipt of social security and annuity benefits had improved her ability to meet her needs" and constituted change in circumstances warranting reduction of alimony); *Frazier*, 455 So. 2d 883, 884 (concluding spouse paying alimony "should have been credited upon his periodic alimony arrearage for the Social Security payments or benefits which [payee] drew" for a period up to the time of paying spouse's death).

We affirm the district court's well-reasoned opinion approving Betty's alimony claim in probate.

AFFIRMED.