IN THE COURT OF APPEALS OF IOWA

No. 3-718 / 12-1926
Filed November 20, 2013

IN THE MATTER OF THE CONVERVATORSHIP OF VERA MAE VOTE, Ward,

CATHERINE KINSEY,
Conservator-Appellant.

IN THE MATTER OF THE ANCILLARY ESTATE OF VERA MAE VOTE, Deceased.

Appeal from the Iowa District Court for Dallas County, John D. Lloyd and Terry R. Rickers, Judges.

Attorney for personal representative appeals the court's order removing attorney and personal representative from the case. **AFFIRMED.**

Valerie Cramer of Cramer Law, P.L.C., Des Moines, for appellant.

John P. Roehrick of Gaudineer, Comito & George, L.L.P., West Des Moines, for appellee.

Considered by Vogel, P.J., and Danilson and Tabor, JJ.

TABOR, J.

This appeal involves the conservatorship and estate of Vera Vote. The district court removed the personal representative and her attorney. The attorney now claims the court failed to follow the procedures in Iowa Code section 633.65 (2009), and reached other incorrect determinations about the handling of the probate matters. Because we determine the court followed the statutory procedure for removal of a fiduciary and took the steps necessary to account for and maintain the assets of the estate, we affirm.

I. Background Facts and Proceedings

Dewey and Vera Vote, an elderly couple, lived in a Dexter, Iowa house titled in joint tenancy with rights of survivorship. Nancy Nevins, Dewey's daughter from a former marriage, also lives in Iowa. Catherine Kinsey, Vera's daughter from a former marriage, lives in Indiana. When Vera became ill with dementia she entered an Adel, Iowa nursing home. Dewey visited Vera regularly at the nursing home until he died in August 2010. That same month, Kinsey decided to move her mother to a nursing home in Indiana.

Kinsey hired Indiana attorney Stephen M. Gentry to assist in her Indiana application for guardianship of Vera. In October 2010 the Indiana court appointed Kinsey temporary guardian, followed by the court's November appointment of Kinsey as Vera's guardian [hereinafter Indiana guardianship].[1] Kinsey hired Iowa attorney Valerie Cramer to assist in the ancillary

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[1] Indiana guardianship case number: 49D081009GU41890.

conservatorship of Vera in Iowa [hereinafter Iowa conservatorship].[2] Kinsey's November 3, 2010 Iowa petition states "the only assets in the Conservatorship are an old automobile and the real estate," and a conservatorship is necessary to sell Iowa real estate.

On November 25, 2010, Vera died. On January 4, 2011, the Indiana court appointed Kinsey the personal representative of Vera's estate [hereinafter Indiana estate]. Kinsey's petition for appointment stated Vera died intestate. The Indiana court required Kinsey to file a $17,000 bond.

In the Indiana guardianship, Kinsey filed a January 19, 2011 final account, report, petition to terminate guardianship, and request for guardian/attorney fees. Kinsey asserted "the guardianship does not have sufficient funds" to pay the fees, and requested the fees become a lien on Vera's Iowa real estate. Kinsey also asked the court to order "the Guardian [Kinsey] make [a] distribution of the balance shown on the final accounting to the personal representative of the Estate of Vera," [also Kinsey]. An attached exhibit, "Guardian's Final Accounting," showed total original assets of $75,140. The Indiana exhibit stated:

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[2] Iowa conservatorship case number: GCPR022273.

[$69,740(Iowa house) $2900 (car) $2500 (“bank account, money, insurance payable to estate”)]	Total Original Assets	$75,140.00
ADDITIONAL RECEIPTS		
Sale of Chevy Impala		$2,200.00
Social Security Retirement		$2,184.60
	Total Estate Assets	$77,324.60[3]
DISBURSEMENTS		
Decatur Township Care Center		$1,061.60
Town of Dexter - house utilities		$247.75[4]
	Total Disbursements	$1,309.35
RECAPITULATION		
Original Assets		$75,140.00
Adjustments-car sold for $2200		$700.00
Additions [matches social security]		$2,184.60
	Total Estate Assets	$77,324.35[5]
	Less Disbursements	$75,315.25
DISTRIBUTION		
Catherine Kinsey - Personal Representative of [Vera Estate]		
[Sources Unexplained]	Cash	$5,575.00
	Real Estate	$69,740.00
	Total Distribution	$75,315.25

[3] We note the $77,324.60 total asset calculation includes the car’s value twice: $2900 under “original assets” and $2200 sale proceeds under “additional receipts.”

[4] The record shows the 10-9-10 check to the City of Dexter is for $2*72* not $247.

[5] In our attempt to understand the exhibit, we have failed to discover the “recapitulation” calculation that results in $77,324.35 total estate assets. If the $700 adjustment is subtracted and $2184.60 is added to $75,140 original assets, then total estate assets equal $76,624.60. Further, if both subcategories are added to the original assets, then total estate assets equal $78,024.60.

On February 7, 2011, the Indiana court approved Kinsey's final report and petition to terminate guardianship. The court found the guardian and attorney fees "reasonable" and ordered: "[D]ue to the unavailability of sufficient cash to pay, at this time, the fees of Kinsey [$3987.99],[6] Gentry [$2323.50], and Cramer [$3758.75] approved herein, any balance owed shall be a lien" on the Dexter, Iowa house. The order further provided: "The distribution made by the Guardian [Kinsey] of the balance shown on the final accounting to the personal representative of [Vera's estate—Kinsey] is hereby approved." Next, Cramer filed an "affidavit of foreign judgment" in Dallas County, Iowa CVCV36751 on March 22, 2011. In the affidavit Cramer identified Vera's Dexter, Iowa house, attached the foreign [Indiana] judgment, and listed the identical judgment creditors/amounts owed as listed in the February 7 Indiana court order terminating Kinsey's Indiana guardianship.

In the Iowa ancillary conservatorship case, Kinsey filed a March 22 final conservatorship report for November 9 to November 25, 2010. Kinsey requested: "On termination funds and assets of this Conservatorship will be distributed to Estate of Vera Mae Vote." The Iowa report stated: (1) $0 cash on hand, $0 funds received, $0 disbursements; and (2) $67,000 total value of assets

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[6] This total included $500 Kinsey identified as the retainer Kinsey paid to Cramer. On 12-28-2010, Cramer executed a letter "To Whom It May Concern," stating: "On September 16, 2010, [Kinsey] paid me a $500.00 retainer for her mother's conservatorship. The retainer has been used up by my services and there is a balance due."

(Dexter house) of ward "at close of account period."[7] Also on March 22, 2011, the Iowa court approved Kinsey's final report and terminated the Iowa ancillary conservatorship.

In a separate March 22, 2011 Iowa filing, "application for appointment of personal representatives of nonresident estate," Kinsey stated Vera died intestate owning real property in Iowa valued at $67,000 [hereinafter Iowa estate].[8] Kinsey also stated the Indiana court had appointed her the estate administrator, and she requested the Iowa court appoint Iowan Karla Clendenen[9] co-personal representative. Kinsey asserted no bond is necessary because she posted a $17,000 bond in Indiana, she is the sole heir, and "the only asset in Iowa is the house."[10] The Iowa court granted Kinsey's request on the same day. At the end of May 2011 the Iowa Department of Human Services (DHS) filed a claim in the Iowa estate case for more than $120,000, citing Iowa Code section 249A.5(2).

On September 27, 2011, in the Iowa estate, Clendenen filed a "combined petition for authority to sell real estate and report of sale." The petition states: "Subject to the approval of the Court, the Administrator has accepted an offer

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[7] We note the Gentry attorney fees ($2047.50 on Iowa report) and Cramer attorney fees/expenses ($3823.75 fees/$160 expense on Iowa report) differ from the Indiana fees ordered to be paid and made a lien by the Indiana court.
[8] Iowa case number: ESPR022360.
[9] Clendenen, Kinsey's cousin, lives in Pleasant Hill, Iowa. Kinsey signed the document and Clendenen notarized Kinsey's signature on March 1, 2011.
[10] Much later, on February 29, **2012**, in the Iowa estate case, attorney Cramer filed an "affidavit of mailing notice," that showed Cramer's signature notarized on March 22, 2011. Cramer's affidavit states on March 22, 2011 (nearly one year earlier), she mailed notice of Kinsey's "Petition for the Estate of Vera Vote and Appointment of Administrator" to Nancy Nevins, Martin Vote, Kinsey, and Indiana attorney Gentry.

from Brad *Wildson* to purchase the [Dexter house] for a total purchase price of $8500."[11] The petition further stated, "at the time of the sale, the property was severely distressed accounting for its sale price," and "[a]ll interested persons have not consented to the sale of the Real Estate." Documents attached included the purchase agreement and the county's assessment of the house at $69,740.

In an October 23, 2011 letter, attorney Jeffrey Bump informed the buyers Clendenen had good and marketable title to the Dexter house, subject to exceptions, including: (1) no order approving the proposed sale is shown as having been granted, and "I require that an order be entered authorizing the sale" and "authorizing the administrator to complete the sale"; (2) due to the large variance between assessed value and purchase price, "I require proof Notice of the Application to Sell this property and the hearing date has been given to the DHS, which has filed a significant claim in the estate"; and (3) the abstract reveals a judgment in favor of Gentry, Kinsey, and Cramer "filled March 22, 2011 and shown as case CVCV36751—I require this judgment be released of record."[12]

Immediately before the Iowa estate hearing on November 1, 2011, two relevant filings occurred. First, Nevins, Dewey's daughter, objected to the

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[11] The real estate contract is dated September 10, 2011, and is signed by sellers Kinsey and Karla Clendenen and buyer Bradley *Waldron*.

[12] Other exceptions noted are: (1) Dewey and Vera Vote owned the property as joint tenants with the rights of survivorship at the time of Dewey's August 2010 death, and "I require that an Affidavit of Surviving Spouse for Change of Title to Real Estate be filed"; and (2) the petition misnames the buyer and should be updated to reflect the proposed purchaser is "Brad Waldron."

estate's request to sell the real estate and the request for extraordinary fees. Nevins contended she is Vera's heir "as shown by a copy of [Vera's] Will which was filed in this court. (*See* Ruling and Memorandum Order of December 8, 2010 – GCPR022273 [Iowa conservatorship])." Nevins argued there had been "no inventory filed or accounting of the proceeds received by the Conservator and counsel was on notice of such as well as the above-referenced Will" and no showing DHS was given notice of or consented to the proposed sale.

Approximately forty minutes later, co-administrator Clendenen filed a report and inventory she had signed on September 15, 2011, showing Kinsey as Vera's only heir at law. The report stated Vera owned real estate valued at $8500 and $14,214.18 in a Wells Fargo bank account "at the time of death" for a total Iowa gross estate of $22,714.18. The attached schedule J, "funeral expenses incurred in administering property in the gross estate," listed $4673.68 funeral expenses, $654.28 administrative expenses, $4069.28 attorney fees, and $130.58 costs for total expenses of $9527.82.

At the November 1, 2011 Iowa estate hearing, attorney Colin Crow, not attorney John Roehrick, represented Nevins and attorney Cramer represented Clendenen. Clendenen testified the assessed value of the "land only" is $13,700, the cost to tear down the house would decrease this land value, and no one bid at auction. During Clendenen's testimony, the following exchange occurred:

> CRAMER: So, Your Honor, this is my bill, and I haven't even included the expenses it's going to cost me to close this real estate.
>
> THE COURT: So is it your position that any real estate attorney handling the estate is entitled to extraordinary fees for the services rendered in connection with the sale of the real estate?
>
> CRAMER: Yes, Your Honor.

During cross-examination, Clendenen stated she did not remember whether the $14,000 Wells Fargo checking account included funds *received by* Vera's estate, and she had no knowledge "those funds were ever in Dewey Vote's name alone." Attorney Crow questioned Cramer about her bill, and Cramer first stated each of the charges on her bill constituted extraordinary fees, including preparation of subpoenas, phone calls with executors, the sale of the real estate, preparation of affidavits, and fees to obtain birth certificates. Cramer then stated she could probably agree the birth certificate fees were not extraordinary but "nothing else."

Nancy Nevins testified she had attempted to probate her father's estate twice and in the beginning she could not find his will. "The bond was not waived [by my siblings] when I couldn't find my dad's will, so it sat in limbo." She found her father's will "this summer in between some pictures at his house, not where my dad said it was." Nevins stated she has been appointed the administrator of her father's estate and does not yet have a full accounting of it. Nevins believes (1) Vera is one of Dewey's heirs in his will but not his sole heir, and (2) Dewey's will states Nevins is to be executor without bond. Nevins informed the court a "hearing is in fifteen days."

Regarding Vera's estate, Nevins testified: "We actually gave Vera's original will to the court December 8, 2010, and it has been totally ignored, and I think it's been ignored because I am an heir." Further, "there were never executors appointed in Vera's estate, only administrators, because again they continued to ignore the will that I sent to the judge and everyone else."

Regarding Cramer's attorney fee bill for Vera's estate, Nevins testified:

> Q. And is it possible that the hours on Ms. Cramer's bill are not directly related to the time spent on Vera's estate but rather related to the lack of cooperation in Dewey's estate? A. Yes, actually the subpoenas were for my dad's estate records, not for Vera's. Vera does not have a checking account. She had dementia for a very long time.
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> Q. So the $14,000 listed now in the checking account on the [Vera estate] report and inventory . . . do you [know] where that $14,000 came from? A. I'm guessing because . . . [s]omeone took the money out of [Dewey's] account on August 30, 2011, and we do not have the records back from Wells Fargo yet who exactly did take it.
>
> Q. So about the same amount that was taken out of your deceased father's account is now sitting in your mother's estate; is that correct? A. It appears so, yes.

The court's November 1, 2011 calendar entry order, "on the record made," denied the application for extraordinary fees as premature, approved the application to sell real estate, and "authorized and directed" the administrator of Vera's estate "to complete the sale." Further, the court sua sponte ordered "no estate funds are to be moved out of the State of Iowa without prior court approval." On November 2, Clendenen executed a court officer deed transferring the Dexter house from Vera's estate to grantees Bradley J. and Teresa M. Waldron for $8500. The transaction was entered upon the auditor's transfer books on November 10, 2011.

Because numerous, additional filings in both the Iowa conservatorship case and the Iowa estate case are relevant to the district court's combined final order and to this appeal, we discuss the additional filings under subheadings in an attempt to avoid confusion.

A. Vera's Iowa Estate—ESPR022360.

On January 4, 2012, Cramer filed a "notice to court," requesting the court take judicial notice of the following events:

> 1. In September 2011 the [Dexter] house in the Estate . . . was sold subject to court approval.
> 2. An application for court approval was made and set for a hearing on November 1, 2011. No objections to the sale were made before the hearing date.
> 3. At the same time a title opinion was done for the buyers which showed judgments on the property.
> 4. In an effort to clear title to the property and get releases, I paid these judgments on October 24, 2011. The cancelled checks are attached . . . .[13]
> 5. At the hearing on November 1, 2011, Mr. Roehrick appeared for Nancy Nevins who is not an heir or party, and objected to the sale of the real estate.[14] Mr. Roehrick made no demand that funds did not leave the state of Iowa. The Judge never mentioned that the funds not leave the state of Iowa. The Judge said he would make his ruling later.
> 6. I received the Judge's order on November 2, 2011 that it was approved to sell the house. I also read that no funds are to leave the state of Iowa which came out of the blue.
> 7. Since I received that order, no fund[s] from the sale of the property or otherwise have left the state of Iowa.
> 8. Mr. Roehrick has wrongfully told the Judge that I violated the Court order. This is not true and I wish to clarify his misstatements.

In February Nevins filed a resistance in the Iowa estate to the application for expenses and final reports. Nevins requested a proper accounting be made to all interested parties. Nevins stated funds were withdrawn from Dewey's bank account following his death and have not been accounted for by Vera's estate. Also:

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[13] The appendix shows checks dated 10-25-2011 from Cramer's trust account to Indiana attorney Gentry for $2323.50 and to Catherine Kinsey for $3987.99.

[14] We note Mr. Roehrick was not the attorney appearing at the hearing.

> 3. Funds were deposited into the Vera Vote estate but their receipt and origin are not shown or reflected on the Inventory filed in the above estate.
>
> 4. Judgments from the State of Indiana and perhaps a Judgment of the Attorney for the Estate were satisfied with funds from the Estate without court approval, creating a priority class of creditors, contrary to law.

On March 6, 2012, the court "on its own motion" set a hearing to address Vera's will not having been admitted to probate, to follow up on the prior order prohibiting any funds from the house sale leaving Iowa, and to determine whether sanctions should be imposed. The court ruled:

> At a recent hearing [on February 14, 2012, Cramer,] counsel for the personal representative, asserted [Vera's] will could not be admitted to probate due to a deficiency in the notarial acknowledgment of the witnesses' signatures shown on the Will. This contention has no basis in law or fact. The fact a will is not self-executing does not prevent its admission to probate . . . . A notarized acknowledgment at the time a will is executed has never been a prerequisite to admitting a will to probate in Iowa (at least for as long as Iowa has been an adoptee of the Uniform Probate Code).
>
> On its own motion, the Court determines this issue should be resolved before any attempt is made to close this estate . . . . [T]here are certain statutory obligations imposed upon any executor named in a decedent's will. The Court is concerned these obligations have not been appropriately addressed or discharged. For the purpose of clarification, the Court is attaching a copy of the *Iowa Practice Series* excerpt dealing with the obligations of those executors nominated in a will, following the death of the person who signed the will.

Additionally, the court ordered the personal representative (Kinsey) and her counsel to "**personally appear** at the hearing to formally explain why [Vera's] will, and the intentions expressed therein, have been avoided. After hearing the explanation, the court will determine whether or not sanctions or further action is appropriate." Also, "the personal representative and her counsel shall be

prepared to verify no estate funds have been transferred outside the State of Iowa, other than the [prior] authorized funeral expense."

In response, on March 15, 2012, Cramer filed a "request to set aside ex parte order":

> COMES NOW Valerie Cramer, attorney for the Estate of Vera Mae Vote and states the following: On March 6, 2012 there was an order signed . . . . This order was prepared by an adversary party to the estate of Vera Vote, it was prepared by John Roehrick and Nancy Nevins. There was no motion or hearing on this order and the attorney for the representative of Estate of Vera Mae Vote was not present when it was signed.
>
> It is very unethical for an ex parte order and communication to be signed and affect an opposing party without the benefit of a hearing. The estate of Vera Vote requests that this order be set aside because it is an ex parte order and both sides did not have an opportunity to be heard.

The court's March 20, 2012 order in response noted the court's March 6 language stating the court set the hearing "on its own motion," and ruled:

> The Court is perplexed by the substance of the allegations in the request filed by Ms. Cramer. At the outset, the Court is at a loss to determine where Ms. Cramer derives any information that supports the contention that the March 6 order was drafted by anyone other than the Court. The Court directs Ms. Cramer to the following excerpt from Iowa Rule of Civil Procedure 1.413(1):
>
> > Counsel's signature to every motion . . . shall be deemed a certificate that . . . **to the best of counsel's knowledge, information, and belief, formed after reasonable inquiry, it is well grounded in fact . . . .**
>
> The Court is equally perplexed by Ms. Cramer's assertion the March 6 order setting a hearing deprived any parties of the opportunity for a hearing. No substantive action is taken in the March 6 order other than to set issues raised by the parties and the Court for hearing . . . .
>
> Nevertheless, the Court will affirm that <u>all</u> pending issues in this [Vera Vote estate] case and [in the Vera Vote conservatorship case] (including the allegations raised in the "Request to Set Aside Ex Parte Order") will be heard on May 18, 2012.

B. Vera's Iowa Ancillary Conservatorship—GCPR02273.

On January 10, 2012, Cramer filed an amended final report, noting a final report was filed in the Indiana guardianship "as all the money was handled in Indiana." Also, the "Final Report in Iowa did not include the finances which we are now including." Cramer attached the Indiana final guardianship report for the court to use as the Iowa amended final conservatorship report. Nevins responded in February, requesting a proper accounting and a hearing. Nevins contended Vera's personal property is not accounted for and no proper accounting of the proceeds and disbursals was provided. Nevins also asserted funds "have been expended from the Estate of Vera Vote to satisfy obligations of the Conservatorship and expenses were incurred in the Conservatorship without Court approval."

On February 15, 2012, the court entered an "order requiring amended final report and providing for notice." The court observed:

> The attorney for the Conservator, Valerie Cramer, has submitted an "Amended Final Report" that is nothing more [than] photocopies of documents obtained from an Indiana court file pertaining to the Ward's guardianship proceedings in that state. The amended final report is not signed and verified by the Conservator as required by Iowa law. Furthermore, the report does not comply with the itemization and format required by Iowa Probate Rule 7.11 (Official Form 5).

The court ordered the conservator "to submit a complete, detailed, and appropriately itemized final report, that is signed and verified, no later than March 15, 2012." On February 28, 2012, Cramer filed another amended final report as ordered by the court. The report stated the conservatorship had $4924.65 cash on hand as of November 25, 2010. The attached schedules showed:

CONSERVATORSHIP RECEIPTS	
11-22-2010 car sale	$2,200.00
11-01-2010 social security	$2,184.60
11-01-2010 life ins. From Dewey	$2,500.00
TOTAL	**$6,884.60**

CONSERVATORSHIP DISBURSEMENTS	
10-22-2010 Indiana Nursing Home	$1,061.60
10-22-2010 Utilities to Dexter	$272.75
11-25-2010 Conservator Fees	$625.00[15]
TOTAL	**$1,959.35**

CONSERVATOR REAL ESTATE	
Dexter, Iowa house	$8,500.00

MISCELLANEOUS PROPERTY	
Wells Fargo Bank Account	[no value listed]
Antiques, cash, Vera's personal property in storage with Nevins	$8,500.00
Personal Property remaining after Nevins storage	$500.00
TOTAL	**$9,000.00**

On March 8, 2012, Nevins filed objections to the final report of the conservator, stating on November 1, 2011, Cramer filed a release and

[15]We note a separate spreadsheet, "Income and Cash disbursement in Indiana Temporary Conservatorship starting 10/21/10 and Iowa Temporary Conservatorship starting 11/9/2010," utilizes the same amounts for the items listed above, but contains different dates on two items—Dexter utilities paid on 10/9/2010 and $625 Indiana conservator fees payment on 2-22-11.

satisfaction of the judgments in Iowa CVCV036751 (Stephen Gentry, $2047.50; Conservator, Catherine Kinsey, $3987.99; and Cramer, $3758.75). Nevins asserted the judgments, at least for Gentry and Kinsey, "were paid from funds on deposit in Ms. Cramer's trust Account." Nevins pointed out these fee payments are not reported in the February 28, 2012 amended final report. "Additionally, the receipt of funds in a sufficient amount to satisfy the judgment/fee award is not shown to have been received by the Conservatorship at any time during its existence." Nevins listed additional deficiencies in the February report:

(1) There is no listing of Vera's Aviva Annuity account or of a checking account for the conservatorship[16] even though the Indiana report reflects a checking account from which the utilities are paid to the City of Dexter;

(2) The report "shows disbursals occurring before funds are on hand, e.g., payments to the nursing home and the City of Dexter in October 2010 when the report shows the conservatorship did not receive any funds until November 1, 2010;

(3) The Indiana report and the Iowa report show the car sale in November 2010 for $2200—however, "it is represented by the Executor of the Estate of Vera Vote the funds for the sale of the vehicle were received and deposited into the Estate checking account on January 21, 2011; and

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[16] Kinsey's June 13, 2011 affidavit for Vera's Iowa estate states Kinsey called the social security administration and was told "they were depositing her checks into Dewey Vote's Wells Fargo checking account to provide for him and his expenses." Also, Vera had an Aviva annuity account. Kinsey was told when Vera died, Aviva "was paying the income into Dewey Vote's Wells Fargo account and that they had overpaid her and would be taking some funds out of Dewey Vote's Wells Fargo account."

(4) The listing of personal property was not reported previously “nor was it listed on the Inventory of the Estate of Vera Mae Vote, initially filed on November 1, 2011 in ESSPRO22360”;

(5) The report does not reflect the depository of the remaining funds on hand ($4924.65) and this amount “does not reconcile with the Indiana Report of funds remaining ($5575.00) on the date of closing February 7, 2011”; and

(6) The amount initially deposited for the opening of the Estate Account is done on January 19, 2011 in an account which is not disclosed and occurs approximately three weeks before the Indiana court approves the closing of the Indiana conservatorship. “This amount does not correspond with any Iowa Account disclosed within” the Iowa report.

On May 8, 2012, Kinsey, as conservator, filed a “second amended final report” in GC022273 “for the period from November 9, 2010 to November 25, 2010,” stating $0 cash on hand, the conservatorship received $8363.60 and disbursed $1334.35, making the cash on hand at the end of the reporting period $7029.25 cash. Finally, “Total value of assets of the ward at the close of this report period is $40,760.69.”

C. Combined Proceedings.

On May 18, 2012, the district court held a hearing on both probate files—Vera’s pending conservatorship and Vera’s pending estate. Cramer appeared on behalf of the conservatorship and estate. Roehrick appeared on behalf of objector Nevins. At the outset, the judge noted he had spent more than an hour before the hearing with Cramer, Kinsey, and Roehrick “trying to sort through and

hash out and refine the issues" needing to be resolved. The court described the issues as threefold: first, "why the decedent's will dated back in 1988 and nam[ing] Ms. Kinsey as the executor was not admitted into probate"; second, "a concern about Judge Lloyd's order entered November 1 that prohibited the transfer of estate or real estate proceeds outside the state of Iowa"; and third, "a response to" Ms. Cramer's filing, "request to set aside ex parte order, wherein she alleged that the Court's order entered on its own motion was prepared by Mr. Roehrick and submitted to the Court without [her] the knowledge."

The court questioned Cramer about her March 15, 2012 request to set aside ex parte order. Cramer admitted she was wrong in making accusations against opposing counsel of obtaining an ex parte order, and she apologized to the court. Next, the attorneys examined Kinsey regarding the conservatorship accounting.

On October 19, 2012, the district court issued a "ruling and order" resolving the issues considered at the May 18, 2012 hearing. The court premised its order by stating "the following actions are necessary in order to resolve problems and irregularities that have arisen in both" the conservatorship and the estate of Vera Vote. The court then directed conservator Kinsey and attorney Cramer to produce all bank account records and statements, insurance policies, annuities, or other financial instruments, whether in Iowa or Indiana, relating to Vera's conservatorship or Vera's estate, including specifically Wells Fargo accounts, accounts where the sale proceeds were deposited after the Dexter property's sale, and accounts where money from Dewey Vote's account

was deposited. The court also ordered the conservator to submit an inventory of all property belonging to the Vera Vote estate and a spreadsheet showing an accounting for all of the expenses and costs of the conservatorship. The court stated after it received that accounting, it would "determine whether any assets, funds, or expenses should be reallocated to the Vera Vote Estate" before the conservatorship was "finally closed." If it determined expenses were improperly paid out of the conservatorship, the court would consider ordering "restitution or reimbursement from the party or parties responsible for the improper expenditure."

The court also ruled personal representative Kinsey and attorney Cramer were "hereby removed, effective immediately." The court kept Clendenen in place as the sole personal representative of the estate and directed her to retain new counsel. The court prohibited additional fees or expenses to "be allowed or paid" to Kinsey or Cramer. Finally, the court reserved the right to impose additional sanctions after the "remedial accounting measures" were completed.

Cramer filed an application for discretionary review from the district court's order on October 31, 2012. On November 28, 2012, the Iowa Supreme Court determined the October 19, 2012 district court ruling was a final order and treated Cramer's application for discretionary review as a notice of appeal. Cramer filed a proof brief on March 29, 2013. Attorney Roehrick filed a notice waiving the opportunity to file an appellee's brief. The supreme court transferred this appeal to our court on July 2, 2013.

II. Legal Analysis

A. Scope and Standards of Review

We engage in a de novo review of the district court's ruling in an equitable proceeding. *In re Estate of Rutter,* 633 N.W.2d 740, 746-47 (Iowa 2001) (explaining appellate court makes its own fact findings but gives weight to the district court's assessment of witness credibility). But we also allow the district court to exercise a large amount of discretion in determining whether to remove a fiduciary of an estate. *Id.* at 749. We will not interfere with the district court's exercise of its discretion unless we find an abuse. *Id.*

B. Substantive Claims

Cramer is challenging the district court's October 19, 2012 order. She divides her brief into seven issues[17] and asserts the district court abused its discretion (1) by removing her as attorney and removing Kinsey as the conservator for Vera Vote and co-administrator of the estate; (2) by finding improper actions occurred in the handling of and accounting for the conservatorship funds and assets; (3) by asserting it had the right to reallocate conservatorship funds and order restitution or reimbursement, in the absence of fraud; (4) by allowing Nancy Nevins to lodge objections; (5) by not rescheduling a hearing on the administrator's expenses, conservatorship costs, and attorney fees (March 20, 2012 order); (6) by finding Vera's "real estate was closed"

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[17] Cramer, in a conclusory manner, also faults the district court for its findings the estate failed to probate Vera's will, and the opening of an intestate estate led to a depletion of Vera's funds. Based on our resolution of the case, we find it unnecessary to address these claims.

without proper court approval; and (7) by finding Dewey's bank account was not Vera's property. We will briefly address each of her claims.

1. The district court did not abuse its discretion in removing the fiduciary.

At the heart of this appeal is the district court's decision to remove personal representative Kinsey—and the resulting discharge of Cramer as the attorney chosen by Kinsey. Cramer contends the court failed to follow the necessary steps in section 633.65 for the removal of a fiduciary.[18] That section states:

> When any fiduciary is, or becomes, disqualified under sections 633.63 and 633.64, has mismanaged the estate, failed to perform any duty imposed by law, or by any lawful order of court, or ceases to be a resident of the state, then the court may remove the fiduciary. The court may upon its own motion, and shall upon the filing of a verified petition by any person interested in the estate, including a surety on the fiduciary's bond, order the fiduciary to appear and show cause why the fiduciary should not be removed. Any such petition shall specify the grounds of complaint. . . .

Iowa Code § 633.65.

Cramer argues the statutory procedure for removal "includes filing a verified petition. It must include specific grounds. The court must order the fiduciary to appear and show cause why she should not be removed. The district court did not follow this procedure."

Cramer's argument overlooks the alternative manner in which a court may initiate removal proceedings. Section 633.65 contemplates a court may "upon its own motion" order a fiduciary to appear and show cause why she should not be

[18] The definition of fiduciary includes personal representatives, executors, administrators, guardians, conservators, and trustees. Iowa Code § 633.3(17).

removed. In its March 6, 2012 order, entitled "Order for Hearing to Determine Why Decedent's Will Has Not Been Admitted to Probate and Determine Whether Sanctions Should Be Imposed," the court directed Kinsey and her counsel to personally appear at a hearing "to formally explain why the Decedent's Will, and the intentions expressed therein, have been avoided." The court's order also stated, after hearing the explanation it would "determine whether or not sanctions or further action is appropriate." Accordingly, this order complied with the statutory procedure allowing a court to sua sponte order the fiduciary to appear and show cause why she should not be removed.

Removal of a fiduciary is a sanction available to a probate court. *See Rutter*, 633 N.W.2d at 749 (discussing a beneficiary's motion seeking removal of executor and fee denial as a request for "sanctions"). The court notified Kinsey and Cramer of its intent to consider "sanctions or further action" after it considered their explanation for not filing Vera's will for probate. After hearing Kinsey's testimony at the May 18, 2012 hearing concerning possible sanctions, the court stated:

> Well, I'm still a little bit befuddled as to what I'm going to do or what I can do to straighten this out. I guess what I will do is I will give both attorneys an opportunity to submit to me a proposed request for relief or proposed course of action following whatever research or forensic accounting that they wanted to perform on the documentation submitted to the court.

The court gave the parties two weeks to submit their proposals; Cramer assured the court she could comply with that deadline. Nancy Nevins' "proposed course of action," filed on May 31, 2012, urged the court to remove the personal representative and her attorney based on their mishandling of the

conservatorship and estate. The record does not show that Cramer filed any proposed order with the court on behalf of Kinsey.

We understand a probate court's determination that the interests of the estate require removal of a fiduciary does not excuse it from following the procedures for removal in section 633.65. *See In re Estate of Heller*, 401 N.W.2d 602, 609 (Iowa Ct. App. 1986); *see also In re Estate of Mann*, 225 N.W. 261 (Iowa 1929) (holding a probate court cannot summarily remove executors during a hearing on other estate-administration matters). But in this case, the court followed the statutory procedures by giving Kinsey and Cramer notice (March 6, 2012 order) that they should appear for a hearing on possible sanctions and by detailing the grounds for their removal (October 19, 2012 order).

The October 19 order found the fiduciary's conduct to be improper in many respects, including: (a) handling of and accounting for the conservatorship funds and assets, (b) closing the sale of Vera's Dexter property without prior court approval, (c) obtaining and transferring funds from Dewey's bank account into Vera's estate, and (d) filing a frivolous motion. In our de novo review, we find no abuse of the district court's discretion in the removal of personal representative Kinsey and her counsel, Cramer, for the reasons stated in the court's order.

2. The court did not abuse its discretion in finding improper actions had been taken in the accounting of the conservatorship.

We find the record supports the court's determination that improper procedures occurred "in handling/accounting of the funds and assets of the

Conservatorship." The May 18 hearing featured Kinsey's imprecise testimony and Cramer's unsatisfying explanations for her actions—both phenomena underscoring the rampant confusion regarding reconciliation of the funds from the closed Indiana conservatorship and the Iowa ancillary conservatorship. Kinsey's admission at the hearing that she did not carefully review the documents attorney Cramer prepared for her to sign does not shield her from the court's removal. *See Rutter*, 633 N.W.2d at 750 (holding a fiduciary cannot disclaim responsibility for actions of its chosen attorney). Incomplete or inaccurate accounting is a reason to replace a fiduciary. *Id.*

3. Cramer cannot show harm from the court's reservation of the right to reallocate conservatorship funds.

The October 19 ruling provided that following production of the information requested from Kinsey and Cramer, "the Court, upon application of an interested party, reserves the right to reallocate assets or funds that may have been incorrectly inventoried in either the Vera Vote Conservatorship or the Vera Vote Estate." Cramer claims absent a finding of fraud, the court had no authority to reserve the right to reallocate conservatorship assets. She claims the court must honor the foreign judgment from Indiana, under Iowa Code section 626B.104, and points out no party has asked to vacate the final conservator's report dated March 22, 2011.

Initially, we note the court expressed its intent to correct any misallocation of funds only if asked to do so by an interested party. Further, it is uncertain whether any interested party would allege that funds or assets have been

incorrectly inventoried and, if a party did so, whether the court would find reallocation necessary after reviewing the information produced. Any injury Kinsey or Cramer might suffer from the court's reallocation is "anticipatory" and insufficient to give them standing at this time. *See Alons v. Iowa Dist. Court*, 698 N.W.2d 858, 870 (Iowa 2005).

4. Nevins had standing to object.

Cramer contends Nevins, Dewey's daughter, is not Vera's heir and has no beneficial interest in Vera's conservatorship or estate. Based on that contention, Cramer argues Nevins lacks standing to object to actions taken in Vera's conservatorship or intestate estate. Cramer further argues Vera's will is "inadmissible" pursuant to Iowa Code sections 633.279(1) and 633.283. Finally, Cramer asserts Nevins failed to timely ask for the will to be admitted to probate under Iowa Code section 633.309.

In her February 14, 2012 resistance to the estate's application for expenses and final reports, Nevins alleged she was an interested party "in that she was the step-daughter of the decedent." Nevins appeared at a hearing on that same date and lodged objections to various actions by Kinsey. In a March 6, 2012 order, the court referred to Nevins as a beneficiary named in Vera's will. On March 8, 2012, Nevins filed an objection to the final report of the conservator, suggesting numerous deficiencies needing correction before the conservatorship was closed. On May 8, 2012, Cramer filed an answer to that objection—addressing the alleged deficiencies but not contesting Nevins's right to object.

As an initial matter, Cramer's brief fails to identify the points in the record where she raised the issue of Nevins's standing and where she received a ruling from the district court. Without that information, we cannot effectively review her claim. *See In re Estate of DeTar*, 572 N.W.2d 178, 181 (Iowa Ct. App. 1997) (declining to consider a brief point deficient in stating how alleged error was preserved).

Even if we assume Cramer preserved the question of standing for our appellate review, we are not persuaded by her substantive arguments. In its March 6, 2012 order, the district court advised Cramer her contention Vera's will could not be admitted to probate had "no basis in law or fact." The court explained how to admit the will into probate. The court attached an Iowa practice guide on the obligation of executors nominated in a will in order to assist Cramer in the performance of her duties. Yet Cramer persists in asserting the will is "inadmissible." Moreover, Cramer's reference to section 666.309[19] is inapposite because Nevins is not contesting or seeking to set aside the probate of a will.

Having the standing to object in an estate probate proceeding requires the objector to have a "beneficial interest." *In re Estate of Oelberg*, 414 N.W.2d 672, 674 (Iowa Ct. App. 1987). A beneficial interest means "one of value, worth, advantage, or use to a person." *Id.* As a purported beneficiary of Vera's

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[19] Iowa Code section 633.309 provides:

> An action to contest or set aside the probate of a will must be commenced in the court in which the will was admitted to probate within the later to occur of four months from the date of second publication of notice of admission of the will to probate or one month following the mailing of the notice to all heirs of the decedent and devisees under the will whose identities are reasonably ascertainable, at such persons' last known addresses.

unprobated will, Nevins had a beneficial interest in preserving the assets of Vera's estate. Accordingly, Nevins had standing to file an objection in the pending Iowa conservatorship probate proceedings and the pending Iowa estate probate proceedings. *See id.* The court did not abuse its discretion by considering Nevins's objection.

5. The district court had no obligation to reschedule a hearing on the administrator's expenses and attorney fees.

Cramer flags a November 1, 2011 calendar entry in which the district court held her extraordinary fees application was premature but could be refiled near the time for closing the estate. She reads that order as a promise the court will "decide the amount of extraordinary fees of the attorney later." She claims the October 19, 2012 order discharging her and disallowing fees contravenes the earlier November 2011 order. She fails to cite any legal authority for her contention. We see this issue as merely a repackaging of Cramer's initial argument that the court erred in removing the personal representative and her attorney. For the reasons stated above, we reject her repackaged argument.

6. The district court did not abuse its discretion in finding Cramer took improper action concerning the real estate sale proceeds.

The record contains ample evidence Cramer paid expenses from the proceeds of the house sale before Judge Lloyd gave his approval. As Judge Rickers explained at the hearing:

> Now, there are, in fact, court orders both in Indiana and Iowa indicating that at some point those expenses need to be paid. The Court's concern was that it was done prematurely, particularly if they are paid out of the proceeds of the house sale, because until

> the house sale is approved by a Court, proceeds of the sale aren't supposed to go anywhere.

Also at the hearing, attorney Roehrick recalled a brief filed by attorney Cramer accusing Roehrick of asking Judge Lloyd, after Cramer left the hearing, to mandate no money from the house sale leave the state without a court order. Roehrick noted he was not even at the hearing; his associate Colin Crowe had appeared before Judge Lloyd.

Attorney Cramer admitted she was "probably incorrect," but tried to justify her actions:

> I was really surprised that Judge Lloyd put that in the order like at the last minute. There was never any objection to the funds leaving the state. I mean, it was totally—if he would have said something at the hearing, I would have said, hey, Judge, I already sent the money out. I apologize. I would have done something. . . . It totally came out of the blue.

The district court asked her: "Judge Lloyd did not rule on the sale of real estate immediately after the hearing, did he?" Cramer admitted Judge Lloyd took it under advisement. We find no abuse of discretion in the court's finding of improper conduct concerning the proceeds from the sale of the real estate.

7. Cramer failed to preserve error on her claim regarding Dewey's bank account.

Kinsey's May 8, 2012 "second amended final report" listed among the conservatorship receipts: $14,214.18 from "Wells Fargo Bank Account - Not available during conservatorship - put into estate account." Kinsey testified she believed the Wells Fargo account was Dewey's and she did not know if her

mother was named jointly on this account. Attorney Roehrick told the court the account was in Dewey's name alone.

In its October 19 order, the court included, "[o]btaining funds from the account of Dewey Vote at Wells Fargo and transferring them to the Vera Vote estate" as one of several improper actions taken by Kinsey and Cramer.

On appeal, Cramer argues the money in Dewey's account was "an asset of the Vera Vote estate" under Iowa Code section 633.212(4). Again, Cramer fails to point us to the place in the record where she raised this argument and also where she received a ruling from the district court. We find her brief so deficient that we decline to consider this claim. *See DeTar*, 572 N.W.2d at 181.

III. Conclusion

For the reasons outlined above, we affirm the district court's order removing the administrator, Kinsey, and her attorney, Valerie Cramer. Upon our de novo review, we conclude the district court did not abuse its discretion (1) by removing Cramer as the attorney and Kinsey as the executor for Vera Vote's conservatorship and Vera Vote's estate; (2) by finding improper actions in the handling of and accounting for the conservatorship funds and assets; (3) by asserting the right to reallocate conservatorship funds and order restitution or reimbursement of the funds, without fraud; (4) by allowing Nancy Nevins to lodge objections; (5) by not rescheduling a hearing on the administrator's expenses, conservatorship costs, and attorney fees (March 20, 2012 order); (6) by finding Vera's "real estate was closed" without proper court approval; and (7) by finding Dewey's bank account was not Vera's property.

AFFIRMED.