STATE OF MICHIGAN

COURT OF APPEALS

In re Estate of GEORGE VAN KULA, SR., Deceased.

DAVID VAN KULA and ROSEMARY JOHNS,

Petitioners-Appellees,

v

ANNE MARGARET MRAUNAC,

Respondent-Appellant.

UNPUBLISHED
October 10, 2000

No. 211708
Macomb Probate Court
LC No. 93-133689-IE

Before: O'Connell, P.J., and Kelly and Whitbeck, JJ.

PER CURIAM.

Respondent, Anne Margaret Mraunac, the independent personal representative of the decedent's estate, appeals as of right from the probate court order granting petitioners' objections to the final account. The petitioners, David Van Kula and Rosemary Johns, objected to deductions from their shares of decedent's estate. We affirm.

Decedent had six children, including respondent and petitioners. In May 1993, decedent became ill and a conservatorship was established. Respondent served as the conservator. The conservatorship lasted until decedent's death in November 1993. Thereafter, respondent filed a final account for the conservatorship which reflected "Notes Receivable" in the amount of $27,067.75. There was no breakdown of this figure in the conservatorship's final account. Petitioners signed waiver/consent forms to close the conservatorship.[1] A separate independent probate file was then opened. Respondent was named personal representative of decedent's estate. Decedent's will provided that his estate be distributed equally between his children. There was no indication in the will that decedent had loaned money to any of the children or that he expected repayment of any loans he might have made.[2] In spite of this, respondent subtracted certain amounts from the shares due and owing to petitioners.[3] Specifically, with regard to Rosemary Johns' share of the estate, respondent deducted $6,422.10 for rent,[4] $4,202.37

[1] On the form signed by petitioner Rosemary Johns the box indicating consent to the petition for the final account was not checked. Only the box waiving notice of hearing on the final account was checked.

[2] A ledger was found among decedent's belongings. According to respondent, she assumed that this ledger reflected loans made to petitioners and the other siblings. The alleged loans stretched back to 1984.

[3] Respondent also subtracted "loan" amounts from Tom Van Kula and Jim Van Kula's shares of the estate. However, those deductions were not disputed below.

[4] Rosemary Johns lived with and cared for decedent for the last two years of his life. He did not charge her rent. After decedent died, Johns lived in decedent's condominium for approximately one year before it was sold. It is for this period of time that respondent sought rent from Johns. Respondent admitted, however, that although she broached the subject of rent with Johns, no agreement regarding rent was ever reached, no written agreement was

for credit card purchases, and $899.01 for loans allegedly made by decedent to Johns. With regard to David Van Kula's share of the estate, respondent deducted $14,204.50 for loans allegedly made by decedent to him.[5] Petitioners objected to almost all of the subtractions. A bench trial was held on petitioners' objections and the trial court determined that respondent did not meet her burden of proof for the subtractions, except with regard to the $3,200 debt owed by David Van Kula, which he acknowledged. Respondent then filed the instant appeal.

Respondent argues that because she presented evidence which established the challenged deductions, the probate court erred in granting petitioners' objections to the final account. We disagree.

A probate court's findings of fact will not be set aside unless they are clearly erroneous. MCR 2.613(C); *In re Estes Estate*, 207 Mich App 194, 208; 523 NW2d 863 (1994). This Court should give special deference to the probate court's findings when they are based upon its assessment of the witnesses' credibility. *In re Erickson Estate*, 202 Mich App 329, 331; 508 NW2d 181 (1993). A court's findings of fact are clearly erroneous when, although there is evidence to support them, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. *Estes*, *supra*, 207 Mich App at 208.

"It is a recognized doctrine that the distributive share due an heir from [a] personal estate may be applied by the administrator in payment of a debt due the estate by the heir." *Marvin v Bowlby*, 142 Mich 245, 248; 105 NW 751 (1905). See *Mannausa v Mannausa*, 370 Mich 180, 187; 121 NW2d 423 (1963). However, the fiduciary has the burden of sustaining and establishing the correctness of his account. *In re Jobe Estate*, 165 Mich App 774, 776; 419 NW2d 65 (1988). As a contract, a prima facie case of a loan is established by showing: parties competent to contract; a proper subject matter; legal consideration; mutuality of agreement; and, mutuality of obligation. *Detroit Trust Co v Struggles*, 289 Mich 595, 599; 286 NW 844 (1939); *Thomas v Leja*, 187 Mich App 418, 422; 468 NW2d 58 (1991).

With regard to the alleged loans made by decedent to petitioners, the probate court found that respondent presented no evidence of a written or oral contract. The probate court found that the only evidence of any loans was a ledger kept by decedent listing amounts and testimony by respondent and brother George Van Kula, Jr. that decedent made loans to petitioners and expected repayment. The probate court noted that this testimony was disputed by petitioners. The probate court also noted that decedent did execute a promissory note on one occasion (with regard to the $3,500 loan to David Van Kula) and, therefore, did understand how to execute an enforceable loan. For those reasons, the probate court held that respondent did not meet her burden of proof to establish the deduction for the alleged loans.

The record supports the probate court's findings. It is clear from the testimony presented at the bench trial that respondent did not meet her burden of proving that monies given to petitioners over the years were, in fact, loans. Respondent claimed that the amounts reflected on the ledger sheet were loans. However, she admitted that she had no personal knowledge of any loans made to petitioners and that she just *assumed* that the figures on the ledger sheets were loans that decedent expected to be repaid. Petitioners disputed that the amounts reflected on the ledger sheets were loans. They testified that, with the exception of the $3,500 loan to David Van Kula reflected in the promissory note executed by decedent and David Van Kula, decedent had given them money over the years but had never demanded or expected repayment.

Under these circumstances, the probate court did not clearly err in granting petitioners' objections to the deductions of the alleged loans from their share of the estate. The evidence in support of respondent's claim that the amounts were loans was weak and contradicted by petitioners. Respondent did not sustain her burden of proving the debt. *In re Jobe Estate*, *supra*, 165 Mich App at 776.

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ever entered into, and she never attempted to collect rent from Johns.

[5] David Van Kula admitted to receiving a loan from decedent in the amount of $3,500. This loan was reflected in a promissory note found among decedent's possessions. No other promissory notes were discovered. David Van Kula admitted that he still owed $3,200 on this loan when decedent died.

We also find respondent's equitable estoppel argument unpersuasive. The elements of equitable estoppel are: "(1) a party, by representations, admissions, or silence intentionally or negligently induces another party to believe facts, (2) the other party justifiably relies and acts on that belief, and (3) the other party is prejudiced if the first party is allowed to deny the existence of those facts." *Conagra, Inc v Farmers Bank*, 237 Mich App 109, 141; 602 NW2d 390 (1999). Here, even if petitioners' action in failing to contest the conservatorship inventory was a silence regarding the debt which induced respondent to believe that petitioners acknowledged the debt,[6] and even if respondent justifiably relied on that silence, she has not shown that any prejudice resulted. As we have already indicated, it was respondent's burden to prove the debt. Whether she was required to prove the debts earlier (in the conservatorship) or at the time of the objections, she did not have access to less information because of the delay. Respondent has not shown that she was prejudiced by petitioners' failure to deny the debt in the conservatorship estate; therefore, her equitable estoppel argument must fail.

Next, with regard to the deduction from Johns' share for rent, the probate court held that respondent did not present sufficient evidence to establish a rental agreement between respondent and Johns. The evidence presented at the bench trial supports this finding. Johns disputed the existence of the alleged rental agreement and claimed she would have moved from decedent's condominium if she was charged rent. Although respondent claimed that she broached the subject of rent with Johns, she admitted that Johns never actually agreed to pay rent and that there was no rental agreement, written or otherwise. Moreover, respondent admitted that she never received any rent from Johns, she never attempted to collect rent from Johns, and initiated no proceedings to evict Johns from the condominium. This evidence supports the probate court's finding that no rental agreement existed.

The burden of proof rested with respondent and she was not able to produce evidence of a rental agreement. "Mere discussions and negotiations cannot be a substitute for the formal requirements of a contract." *Thomas, supra,* 187 Mich App at 422. The probate court did not dearly err in finding that respondent did not establish that Johns owed rent to the estate.

With regard to the deduction from Johns' share of the estate for the credit card "debt," respondent did not sustain her burden of establishing that this was a debt of the estate. There is no dispute that the credit card debt was covered by credit life insurance and that the amount outstanding on decedent's Visa card was never charged to the estate. Respondent, herself, admitted that the entire credit card balance was paid by credit life insurance and that the estate was not responsible for and did not pay the debt. Therefore, there was no "debt" to be recovered from Johns.

In summary, the probate court did not clearly err in finding that respondent failed to meet the burden of proof to establish the deductions from petitioners' share of decedent's estate.

Affirmed.

/s/ Peter D. O'Connell
/s/ Michael J. Kelly
/s/ William C. Whitbeck

[6] We note that the final account in the conservatorship only reflected "Notes Receivable" in the amount of $27,067.75 and that it did not contain a breakdown of this figure. There is no explanation for this figure in the final account, no designation as to the source of the "Notes Receivable," and no indication that the "Notes Receivable" pertain in any way to petitioners. Under these circumstances, petitioners could not have been expected to object to this amount or to understand that the amount reflected a debt allegedly owed by them.