

IN THE COURT OF APPEALS OF IOWA

No. 2-806 / 12-0244
Filed October 31, 2012

**IN RE ESTATE OF JAMES E. ROWELL,
Deceased.**

NANCY CANNY,
Executor-Appellant.

Appeal from the Iowa District Court for Wapello County, Annette J. Scieszinski, Judge.

The executor appeals a district court ruling determining the decedent's brother was the owner of certain property the executor claimed belonged to the estate. **AFFIRMED.**

Richard J. Gaumer of Gaumer, Emanuel, Carpenter & Goldsmith, P.C., Ottumwa, for appellant.

Jeffrey R. Logan of Curran Law Office, Ottumwa, and John Martin of John B. Martin Law Office, Bloomfield, for appellees.

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

DOYLE, J.

In this appeal, we are asked to untangle the commingling of farming assets by two brothers who were, in the words of the trial court, life-long compatriots in farming. Based upon our review of the record, we conclude the court correctly determined the ownership of the disputed items of property and affirm its judgment.

I. Background Facts and Proceedings.

The decedent, James Rowley, died testate on September 20, 2010. He left behind three adult children and a brother, Marvin Rowley. Like their parents before them, James and Marvin were farmers. Although they ran separate operations, they often helped one another out on their farms. This was especially true in the later years of James's life when his health began to fail.

James owned several parcels of farmland, including those colloquially known in the family as the Home Place, Grandma's Corner, the Lake, and the Hill. Marvin owned a portion of the Hill and the Lake and kept cattle at both places. James kept his cattle at the Home Place. Marvin also kept some equipment, tools, and grain at Grandma's Corner, where he and his wife, Sandra, had lived for several years before it was transferred to James.

Beginning in about 2001, James started to split the sale proceeds from his cattle with Marvin. Marvin said this was to compensate him for helping James care for the cattle. The last of James's cattle were sold in 2010, according to Marvin. During this same time period, Marvin helped James plant and harvest his crops. James occasionally repaid Marvin for his help by giving him equipment or other items. And Marvin sometimes purchased equipment from

James by giving him a wagon load of soybeans or corn. The brothers often traded services in this manner, with no consistent record keeping between them.

This informal system of accounting became apparent after James's daughter, Nancy Canny, was appointed as executor of his estate. In the year following her father's death, Nancy made a herculean effort to sort out James's assets from receipts stuffed in huge popcorn cans and scraps of paper with notes written on them. She eventually filed an application to discover property under Iowa Code section 633.112 (2009). The application asserted Marvin had possession of cattle, equipment, and grain that belonged to James.

Marvin filed an objection to the application, denying its allegations and asserting the estate had possession of property belonging to him. He and his wife, Sandra, then filed a claim in probate, seeking compensation for "[c]ustom farm work, rent and personal services" they had provided to James. Nancy gave Marvin and Sandra notice of disallowance of the claim and filed an application for a temporary writ of injunction prohibiting Marvin from "using, selling, disposing, moving, or otherwise dealing with any of the assets in dispute." Marvin and Sandra requested a hearing on the disallowance of their claim.

All of the pending matters were heard together by stipulation of the parties.¹ Following the hearing, the trial court entered an order finding in relevant

¹ The parties further stipulated that although they were aware "of precedent of the Iowa Supreme Court which indicates that when a hearing is held pursuant to Section 633.112 on the discovery of property, that the process could be a two step proceeding," they did not want "multiple hearings and desire[d] to resolve all issue[s] in the one proceeding." See Iowa Code § 633.112 (stating the court "may require any person suspected of having possession of any property . . . of the decedent . . . to appear and submit to an examination under oath touching such matters, and if on such examination it appears that the person has the wrongful possession of any such property, the court may order the delivery thereof to the fiduciary"); *In re Estate of Samek*, 213 N.W.2d 690, 691-92

part that Marvin was the owner of the following disputed items of property: (A) proceeds from the sale of cattle, (B) corn in a steel bin at Grandma's Corner and two wagon loads of soybeans that had been located there, (C) an auger, cutting torch, and John Deere 4620 tractor, and (D) various items located at Grandma's Corner. Nancy filed a motion to enlarge and amend the court's ruling, which was denied. This appeal followed.

II. Scope and Standards of Review.

"Our scope of review is governed by how the case was tried in district court." *In re Estate of Hettinga*, 514 N.W.2d 727, 729 (Iowa Ct. App. 1994). Before the hearing, the parties stipulated "the action for the establishment of a contested claim is a law action and the action for the turnover of property claimed by each party against the other shall be tried as a proceeding in equity." See Iowa Code § 633.33. They nevertheless maintain on appeal that our review of the entire proceeding should be de novo. We will accordingly review the case in that manner, *see, e.g., Hettinga*, 514 N.W.2d at 729, though we note our conclusion would be the same under either scope of review.

III. Analysis.

Although Nancy asserts there are "four central issues in this case," her underlying argument on all is the same—that the trial court arbitrarily chose to believe Marvin in what she characterizes as a "winner takes all decision." To the

(Iowa 1973) (describing section 633.112 as "merely a discovery statute" and stating that "once it is established a controversy exists, other proceedings must be brought to determine the ownership of the contested property"). To that end, the parties agreed "that if the Court determines that property is in the hands of Marvin F. Rowell or Sandra J. Rowell belonging to the Estate of James E. Rowell, the Court has the authority to direct the delivery thereof to the Fiduciary" and vice versa.

contrary, we find the court's well-written decision includes a careful dissection of the parties' competing claims to the property, with the court ultimately finding Marvin more credible for the following reasons:

Recollections and opinions are offered in good faith by various family members, but the historic accounts or reconstructed circumstances [by Nancy] are not necessarily entitled to weight when tested with all of the other evidence. As among the testimonial accounts, Marvin addresses the difficult issues forthrightly, with personal knowledge and substantive recall that warrants evidentiary weight. It is noteworthy that he exercises discretion in the positions he takes—sometimes even against his own financial interest.

Nancy has done a commendable job as a fiduciary She has devoted untold hours to the cataloguing of data, and has thoroughly studied the material to deduce an understanding of her father's business.

Beyond her work products, though, Nancy held no meaningful knowledge of the details of her father's farming business. Prior to his death she was not involved with his operation other than to hear him make casual, isolated comments about his day's activities when he would visit her in her home. When Jim needed to talk business, or chose to confide about financial matters, he did it with Marvin. Consequently, Marvin is vested with knowledge of his own operation, but also direct and reliable insights into Jim's.

We defer to such express credibility findings, even where our review is de novo. *See id.* (stating in a de novo, we “give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them”); *see also Perkins v. Madison Cnty. Livestock & Fair Ass'n*, 613 N.W.2d 264, 267 (Iowa 2000) (“We are especially deferential to the district court's assessment of witness credibility.” (citation omitted)). This is because the trial court, as the original trier of fact, is in a much better position to judge the credibility of the witnesses than our court on appeal. *See In re Marriage of Urban*, 359 N.W.2d 420, 423 (Iowa 1984) (observing a trial court “is greatly

helped in making a wise decision about the parties by listening to them and watching them in person” whereas “appellate courts must rely on the printed record in evaluating the evidence” (citation omitted)).

With the court’s credibility findings in mind, we turn to Nancy’s specific arguments regarding the four disputed categories of property, the first being the cattle sale proceeds.

A. Cattle Sale Proceeds. Marvin testified that although he and James both raised cattle, they kept their herds separate. Marvin’s cattle were on the Hill and the Lake, while James kept his “[d]own at his place” where they “just kind of r[a]n wild.” When James’s health began to deteriorate, Marvin helped James by tending to his cattle during the wintertime and providing him with hay throughout the year. As compensation, Marvin testified that James split some of his cattle sale proceeds with him. He also said that James sold all but about six calves before he died. Marvin claimed the remaining cows were his, some of which he sold after James’s death for \$14,214.39.

Nancy believed the estate was entitled to one-half of that amount. She based her claim on records from the sale barn showing that from 2001 through 2010, James sold \$169,000 in cattle. Those proceeds were divided equally with Marvin, as shown by settlement receipts from the barn. During that same time period, Marvin sold cattle in his own name. The sale barn showed some of those proceeds were split with James, while other checks were issued to Marvin alone. Nancy claimed the estate was also entitled to one-half of the proceeds Marvin retained for himself during those years, approximately \$16,407.30. The trial court disagreed, finding Marvin was “the rightful owner of all cattle existing at the

time of Jim's death," and as such, he was "entitled to retain all the proceeds from the cattle sold, including the \$14,214.39." We agree.

The documentary evidence on which Nancy bases her claim to the cattle sale proceeds is conflicting. James and Marvin separately insured their herds, with each of them claiming 100% ownership in all of the cattle listed on their policies. James listed the exact same number, type, and value of cattle on his policy every year (twelve yearling calves, twenty stock cows, twenty stock calves, and one bull), suggesting these numbers were not entirely accurate.

We also observe that while the sale barn records showed the brothers sometimes split the money from the sale of their cattle, they did not always do so. When the proceeds were split, Marvin testified there was not much discussion about it:

Yeah. I didn't know about that until we took a load over there that day, and that's when it started whenever it was. He gave me half of it.

Q. Did you have a conversation with James? A. No. He just told me to take half of them. . . .

. . . .
Q. And did you wonder why you were getting half the cattle?
. . . A. I about knew why. I didn't ask, no. I spent a lot of time down there.

This appears to be the way the brothers typically operated, as the trial court found:

It was all deemed fair and square between the brothers in accord with their unique business standards and habits of operation. If their contributions were uneven one way or another, the brothers apparently exercised their prerogative to ignore it because neither had a running record of credits and debits from the other when Jim passed. It was considered by them to be even, and the trial evidence does not establish otherwise.

Given this state of affairs and Marvin's testimony on the issue, we cannot agree with Nancy that the court acted inequitably in awarding all of the cattle sale proceeds to Marvin.

B. Corn and Soybeans. Nancy next asserts James owned the corn that was in a bin at Grandma's Corner when he died, as well as two wagon loads of soybeans that had been stored there. Marvin sold one of those loads after James died for \$1526. He moved the other to James's son's farm. Marvin testified all of that grain was his. With respect to the corn, Marvin stated that he put two or three wagon loads into the bin every year. He testified the beans were from a harvest a couple of years before the hearing. According to Marvin, although James also had crops, he typically "sold most of it right [out of] the combine."

Nancy's claim to the grain is based on the fact that it was located at Grandma's Corner, which was her father's property. She testified James "farmed his whole life. He has done raised corn He did farming in that area. He just probably put it in that bin. I don't know." While a "rebuttable presumption of ownership arises from the possession of property," mere possession of an item "is not the only indicia of ownership." *Thorp Credit, Inc. v. Wuchter*, 412 N.W.2d 641, 643-44 (Iowa Ct. App. 1987). Ownership may also be proven, as it was in this case, through credible testimony about an individual's farming methods. See *id.* at 644-45 (concluding ownership of cattle rested with the defendant's son based in part on his family's "method of farming operations").

Nancy assumed the grain was her father's because it was on land he owned and because he typically planted crops. But Marvin's much more detailed

testimony established that Grandma's Corner was used by both brothers for their farming needs. For example, when asked why he kept the corn and beans at Grandma's Corner, Marvin replied simply, "That's where the bin is or the machine shed." Such a shared use of facilities among family members is not uncommon. See *id.* at 644 (recognizing it is often "necessary for farm families to pool their resources in order to maintain a profitable farming operation"). And it is consistent with the fact that the land used to belong to Marvin and James's parents and with the fact that Marvin and his wife had lived there for a period of time. We accordingly affirm on this issue as well.

C. Auger, Cutting Torch, and John Deere 4620 Tractor. Nancy next asserts the trial court erred in determining an auger, cutting torch, and a John Deere 4620 tractor were owned by Marvin. We again conclude otherwise.

Nancy's claim to the first two items stems from Marvin's request to use the items while these proceedings were pending. According to Nancy, if Marvin had owned those items, "there was no reason he would have to ask to get his own property." Marvin explained, however, that he allowed James's son to use the auger and simply asked for it back when he was done with it. As for the cutting torch, we agree with Marvin's assertion that "[g]iven the increasingly contentious nature of the relationship between Marvin and James's children, communicating through his attorney to retrieve an item located on James's property was the reasonable thing to do." Indeed, at one point in the proceedings, Nancy requested the court to enter a temporary injunction enjoining Marvin from using equipment that she believed belonged to the estate. This brings us to the larger bone of contention—the John Deere 4620 tractor.

Marvin testified he and James purchased this tractor together at a consignment sale in 1994 for \$7140, as evidenced by a canceled check James wrote that year for \$3575, with a memo line of “4620 J.D.” Marvin planned to buy out James’s interest in the tractor by planting crops for him. But soon after the brothers’ purchase of the tractor, James’s eyesight began to fail and “he couldn’t see good enough” to use the tractor. So Marvin stated James gave him his share of the tractor. He believed this occurred in 1996 or 1997.

Nancy contests this testimony by pointing to James’s insurance policies, which insured the tractor up until 2005. From that point forward, however, James stopped listing the tractor on his insurance policy, and Marvin started listing it on his in 2007. Nancy also bases James’s claim of ownership on a canceled check he wrote in March 2009 for \$150, with a memo line of “tires 4620.” Though Marvin did not dispute that James may have bought tires for the tractor, he questioned, “What kind of tires would \$150 buy?” In any event, we agree with the trial court that Marvin’s testimony on the issue was entitled to more weight than the conflicting documentary evidence described above because, as the court stated:

Jim and Marvin went about their individual record keeping—for the records they did keep, in similar style. Much was done using cash, little was documented by standards common in modern business accounting, and there was scant attention to keeping the farmsteads tidy. Both did it their way on paper, and on the ground. And sometimes they did it inconsistently. While there are insurance records and tax accounting copies to consult on various issues, those documents cannot be singularly dispositive on any given issue; some are irreconcilable with other credible evidence, and some are reconcilable with other credible evidence. In some situations, possession becomes the most credible factor in who owns what.

D. Property at Grandma's Corner. It appears from the record that a large amount of old machinery, collectible tractors, wagons, trucks, tools, and hit-and-miss motors were stored at Grandma's Corner. Some had been there for close to thirty years. Marvin identified each item he claimed was his and testified about where he had acquired the property. For example, he stated that he purchased the hit-and-miss motors from a man named George Heh in Alabama about ten years ago. He stored the motors at Heh's farm in Iowa and moved them to Grandma's Corner after Heh's death in 2004. Marvin's wife, Sandra, was with him when he bought the motors and confirmed his testimony in this regard. As for the other items Marvin claimed were his, Sandra explained:

Marvin's acquired older tractors ever since I've known him. . . .

. . . .
That stuff—a lot of that stuff was there when we got married. Marvin got it when he was—before we was married, and he's always lived on that place [Grandma's Corner]. He's farmed all of his life and, you know, he buys that stuff, and it was never a problem with keeping it there. Him and his dad built the shed and so that's—we just put [it] in there.

Nancy contests this testimony by relying on the testimony of James's son, who said James had told him "that old Heh g[a]ve him hit-and-miss motors for taking care of the place and g[a]ve Marvin that Silver King [tractor] and that other stuff for taking care of it. Q. So it was your understanding that the things that Marvin got from Alabama were split? A. Yeah." The court, however, generally believed Marvin's testimony over the testimony of James's children, who were further removed from the transactions than he was. This is supported by the fact that Marvin did not claim that everything at Grandma's Corner was his. And he readily agreed to return equipment James had stored at Marvin's farm to the

estate. These actions lend credence to Marvin's claims of ownership of other items.

IV. Conclusion.

Based upon our review of the record, and the deference afforded to the trial court's credibility findings, we conclude the court correctly determined the ownership of the disputed items of property. We accordingly affirm its judgment.

AFFIRMED.