

IN THE COURT OF APPEALS OF IOWA

No. 3-263 / 12-1340

Filed April 24, 2013

**IN THE MATTER OF THE ESTATE OF
CARROLL IRVING SAMPSON, Deceased.**

**CHERYL ANN MURKEN and MARY
ANN SMITH, Co-Executors of the
Christine Rosilia Sampson Estate,
Appellants.**

Appeal from the Iowa District Court for Story County, James C. Ellefson,
Judge.

The executors of Christine Sampson's estate appeal the probate court's
order denying their motion for summary judgment that alleged an action by family
members to reopen Carroll Sampson's estate was time barred. **AFFIRMED.**

John D. Jordan and Meredith C. Mahoney Nerem of Jordan & Mahoney
Law Firm, P.C., Boone, for appellants.

John P. Dollar and Scott S. Riemenschneider of Wilson, Deege, Dollar,
Despotovich & Riemenschneider, West Des Moines, for appellees.

Considered by Vaitheswaran, P.J., and Tabor and Mullins, JJ.

TABOR, J.

The question in this appeal is whether a petition to reopen Carroll Sampson's estate, filed seventeen years after it was closed, should be dismissed as untimely under Iowa Code section 633.488 (2011). Finding the action to reopen arises under section 633.489, which places no limitation on the time for filing, we affirm the probate court's order denying summary judgment.

I. Background Facts and Proceedings

Carroll Sampson died on July 29, 1993. He was survived by his wife, Christine. They did not have any children. In article two of his will, Carroll stated:

I give any automobiles, household furniture or furnishings, silverware, china, crystal, books, wearing apparel and other tangible personal effects owned by me at my death to Spouse, if she survives me for a period of thirty days. I give the residue of my estate to Spouse, if she survives me for thirty days.

In article three of the will, Carroll gave Zion Lutheran Church of Radcliffe "the sum of \$500." In article four, Carroll stated: "The rest residue and remainder of my estate I divide into fifteen equal parcels" to be divided among his siblings and Christine's siblings, or the children of those siblings. Nothing in the will explains the relationship between the residuary clauses in articles two and four.

The main asset of Carroll's estate was an undivided one-half interest in two parcels of real estate comprising about 200 acres of farmland in Hardin County. Carroll owned this real estate with Christine as tenants in common. At the time of Carroll's death, the property was valued at approximately \$1800 per acre.

Christine survived her husband for more than thirty days and acted as the executor of his estate. Although they were aware of Carroll's death, notice of the probate proceedings was not given to the residuary beneficiaries identified in article four of the will. The final report was filed on December 30, 1992, but did not contain the name and place of residence of each of the devisees and their relationship to Carroll as required by Iowa Code section 633.477(5) (1993). The estate was closed on January 3, 1994, and all of the assets identified in the estate passed to Christine.

Initially Christine's will mirrored Carroll's will. But in 2006 Christine changed her will to remove the beneficiaries listed in article four. She devised the real estate she and Carroll had owned as tenants in common to charity. Christine died on March 1, 2011, and her estate was admitted to probate.

Family members were under the impression that Christine received a life estate with respect to the farmland. They expected Christine would live off the income generated by the real estate, and at her death, it would pass to them. When Christine died, they learned they were to receive nothing. Family members allege they did not discover Carroll's will until after Christine's death.

On July 28, 2011, the relatives identified as residual beneficiaries in Carroll's will, and their successors in interest, filed a petition to reopen his estate pursuant to section 633.489 to determine their interests. In their answer, the executors of Christine's estate argued the court did not have jurisdiction to reopen Carroll's estate because more than seventeen years had elapsed since it

closed. The executors moved for summary judgment, arguing the action was time-barred under section 633.488.

The probate court held a hearing on June 29, 2012. On July 5, 2012, the district court entered its order denying the motion. The court found section 633.489—which does not limit the time in which an estate may be reopened—governs the action.

The executors applied for interlocutory appeal of the summary judgment. Our supreme court found the executors were entitled to an appeal as a matter of right and transferred the case to this court.

II. Scope and Standard of Review

We review summary judgment orders to correct legal error. *Green v. Racing Ass'n of Cent. Iowa*, 713 N.W.2d 234, 238 (Iowa 2006). Such motions should only be granted if, viewing the evidence in the light most favorable to the nonmoving party, “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” *Id.* A fact is “material” when its determination might affect the outcome of the suit. *Keokuk Junction Ry. Co. v. IES Indus., Inc.*, 618 N.W.2d 352, 355 (Iowa 2000).

III. Analysis.

The question before us is whether this action is governed by section 633.488, which limits the time for reopening an estate, or by section 633.489, which does not. The executors contend because section 633.488 controls, the

action is untimely and the district court erred in denying their motion for summary judgment.

Section 633.488 states in pertinent part:

Whenever a final report has been approved and a final accounting has been settled in the absence of any person adversely affected and without notice to the person, the hearing on such report and accounting may be reopened at any time within five years from the entry of the order approving the same, upon the application of such person, and, upon a hearing, after such notice as the court may prescribe to be served upon the personal representative and the distributees, the court may require a new accounting, or a redistribution from the distributees.

In other words, section 633.488 “allows adversely affected, interested persons who did not receive notice of the estate’s final report and accounting, a five-year window to ask for a new accounting, settlement hearing, or redistribution.” *In re Estate of Roethler*, 801 N.W.2d 833, 838 (Iowa 2011).

Section 633.489 provides: “Upon the petition of any interested person, the court may, with such notice as it may prescribe, order an estate reopened if other property be discovered, if any necessary act remains unperformed, or for any other proper cause appearing to the court.” This section permits an interested party to reopen an estate if the party can show any of the following: “(1) new property, (2) a ‘necessary act’ remains, or (3) ‘any other proper cause’ exists.” *Roethler*, 801 N.W.2d at 838.

Roethler explains the provisions of sections 633.488 and 633.489 “concern two distinct scenarios.” *Id.* at 839. Section 633.488 permits distributees who are not given notice of the final report to have a hearing to reopen the accounting “to ensure the estate was properly accounted, settled, and

distributed.” *Id.* Section 633.489, on the other hand, concerns a scenario wherein a party seeks “to readminister or structurally change the estate’s administration in a way not contemplated during probate.” *Id.* Cases applying this section have involved reopening estates to re-inventory property, to perform acts not considered in the original administration, or to perform acts more substantial than just distribution among distributees. *Id.* at 840.

In finding the instant case is governed by section 633.489, the probate court determined the residuary beneficiaries of Carroll’s estate are seeking to do more than obtain a new accounting, settlement hearing, or redistribution. They are asking the court to decide whether they were entitled to be distributees. The court viewed that as a structural change in the administration of the estate not contemplated during the original probate.

The executors argue the reopening is an attempt to redistribute property listed on the inventory and contemplated by the court at the time of the estate’s probate. We disagree. While the effect would be to redistribute Carroll’s assets, the residual beneficiaries seek a structural change in the estate’s administration. Under their reading of the will, Christine would no longer be the sole beneficiary of Carroll’s estate. Carroll’s one-half undivided interest in the real estate he shared as a tenant in common with Christine would pass to his residual beneficiaries at Christine’s death. Such a distribution was not contemplated when his will went through probate.

Because the residual beneficiaries seek a structural change in the estate's administration, the probate court was correct in applying section 633.489, which has no time bar. Therefore, we affirm the denial of summary judgment.

AFFIRMED.