IN THE COURT OF APPEALS OF IOWA

No. 3-446 / 12-1703
Filed July 10, 2013

JAN K. HARRIS,
Plaintiff-Appellant,

vs.

HUGH V. FAULKNER, As Executor of the ESTATE OF BARBARA L. HUMPHREY,
Defendant-Appellee.

Appeal from the Iowa District Court for Mahaska County, James Q. Blomgren, Judge.

An heir appeals from the order approving the sale of real property and from the order denying her motion to amend and enlarge. **AFFIRMED.**

Jan Harris, Mooresville, North Carolina, pro se.

David Dixon of Heslinga, Dixon, Moore & Hite, Oskaloosa, for appellee.

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

EISENHAUER, C.J.

Jan Harris, a daughter of decedent Barbara Humphrey, appeals from the district court orders in probate approving the executor's sale of real property and denying her motion to amend and enlarge. We affirm.

Barbara Humphrey died in October 2010. The petition for probate of her will and appointment of executor identified a will dated November 2001. The will nominated Hugh Faulkner, a local attorney, as executor. The estate inventory showed a gross estate of about $75,000, including real property with an estimated value of $65,000. A later appraisal valued the property at $50,000. The will authorized the executor "to sell and convert into cash any property, including real estate, . . . upon such terms and conditions as are deemed advisable by my Executor . . . without notice, hearing, or other court approval of any kind." After some specific bequests, the will bequeathed one-sixth of the remainder to each of Humphrey's three children and three named grandchildren per stirpes.

At a meeting in May 2011 to seek a family settlement agreement, Harris offered $25,000 for the real property. The executor refused the offer. Later, one grandson offered $40,000. The executor counter-offered $57,000. The grandson responded he was not interested, even at $50,000. The executor listed the property with a local realtor. The executor received an offer of $55,000. The executor notified Harris's attorney of the offer and stated he would accept the offer and proceed with the sale unless he heard from the grandson within a week. After a week passed, the executor accepted the $55,000 offer.

A conformed copy of a will dated December 2002 was located, but the original never has been found. Faulkner had it admitted to probate in November 2011 as a lost will. The 2002 will also named Faulkner as executor and gave the executor the same authority to sell estate property without court approval. The only difference between the wills was the elimination of one named grandchild's share, combining it with his mother's share.

The executor, despite the grant of authority to sell the real estate, filed an application for approval of the sale of the real estate in January 2012. The matter came on for hearing over two days in May. The executor testified he filed the request for authority to sell to avoid possible title objections. Harris appeared pro se. During the hearings she brought to the court's attention years of family history, her belief her father wanted the family home he built to stay in the family, the $25,000 and $40,000 "family" offers for the property, and her concerns about the initial probate of a 2001 "revoked" will when the executor knew of the existence of the 2002 will. Harris also presented evidence her parents executed a joint will in 1972. The court more than once noted the only issue before the court was the executor's request for approval to sell the real estate.

In its ruling approving the executor's sale of the real estate, the court acknowledged there was a 2001 and a 2002 will, but the language in both giving the executor authority to sell the real estate without court approval was identical. The court concluded the executor obtained the best price possible and approved the sale.

Harris filed a motion to amend or enlarge, asserting both the 2001 and 2002 wills were invalid and the court erred in not finding the 1972 will controlling.

She requested the court amend its findings and conclusions and order the real estate sold to her. In its August 2012 ruling on the motion, the court reiterated the only issue before the court in the May hearing was approval of the sale of the real estate. The court denied the motion. Harris appeals.

This matter was tried as a law action. Our review is for correction of errors at law. Iowa R. App. P. 6.907; Iowa Code § 633.33 (2011).

Harris raises eleven claims on appeal. We first address her fourth claim because it is the only claim directly relating to the challenged court ruling. She claims the court erred "in not recognizing notifications to retain family legacy, attempts for a family settlement, and multiple offers to fairly and expeditiously close" the estate. She argues family settlements are favored and the will did not prohibit the executor from distributing property in kind. Both of those statements are true but do not affect the result. There was an attempt to reach a family settlement, but none was reached. Although the will did not prohibit the executor from distributing property in kind, it expressly authorized him "to sell and convert into cash" any property of the estate "without notice, hearing, or other court approval of any kind." The real estate was valued between $50,000 and $65,000. Harris made an oral offer to buy the shares of the other heirs for $25,000. One grandchild made a written offer for $40,000, but declined a counteroffer of $57,000, and expressed no interest even at $50,000. The executor accepted an offer for $55,000. The executor acted properly. *See DeLong v. Scott*, 217 N.W.2d 635, 637 (Iowa 1974); *see also Feaster v. Fagan*, 113 N.W. 479, 480 (1907) ("The executor acts under the power given by the will, and not under the authority of the court."). Although court approval was not

necessary under the authority conferred by the express terms of the will, the court did not err in approving the sale. We affirm on this issue.

The remaining ten claims revolve around issues not before the trial court in the hearing on the executor's application for approval of the sale.[1] While we acknowledge Harris presented evidence concerning other wills, years of family history, and her concerns about the executor's actions, most of the evidence did not relate directly to the question before the court—whether to approve the sale—and none of the evidence affects the conclusions the executor had the authority to sell the real estate and acted properly. We conclude the ten claims are not properly before us on appeal.

AFFIRMED.

[1] The trial court file indicates there was a later hearing on issues concerning the wills, but it is not involved in this appeal.