

IN THE COURT OF APPEALS OF IOWA

No. 8-772 / 07-2163
Filed October 29, 2008

**IN THE MATTER OF THE ESTATE OF
FLORENCE M. NIELSEN, Deceased,**

**CAROL SWANSON, Heir to the Estate
of FLORENCE M. NIELSEN,
Appellant.**

Appeal from the Iowa District Court for Woodbury County, Michael Walsh,
Judge.

Carol Swanson appeals from the district court's order denying her motion to surcharge an estate executor, granting the executor and attorney extraordinary fees, deducting the extraordinary fees from Swanson's portion of the estate as a sanction, awarding joint accounts to named individuals, and reimbursing individuals for advances made to the estate. **AFFIRMED.**

Carol Swanson, Winter Park, Florida, pro se appellant.

Dean Meine, Sioux City, for appellee Betty March.

Kendra Olson, Sioux City, for appellee Estate of Florence M. Nielsen.

Considered by Sackett, C.J., and Miller and Potterfield, JJ.

POTTERFIELD, J.**I. Background Facts and Proceedings**

Decedent Florence Nielsen, the mother of Carol Swanson, Betty March, and several other children, died testate on May 31, 2005. Her will named her daughter Betty March as executor. March retained attorney Dean Meine to represent the estate. The estate's main asset was a house, which the listing real estate agent valued between \$105,000 and \$110,000 and listed for sale. On November 15, 2005, one of the decedent's grandchildren, Troy March, Betty March's son, made an offer to buy the house for \$109,900. Another buyer who was unrelated to the family, Don Smith, had previously offered \$105,000. Troy March's offer was accepted. Shortly thereafter, on November 18, 2005, Smith orally offered to buy the house for \$109,000. However, because the estate already had accepted Troy March's higher offer, it did not take any action on Smith's second offer.

Troy March was unable to obtain financing for his offering price of \$109,900 because the property appraised for only \$107,000. All of the heirs except Swanson agreed to sell the house to Troy March at the appraised value. Swanson raised numerous objections to the sale to Troy March, delaying and ultimately preventing him from buying the house. The house eventually sold in February 2006 to a buyer unrelated to the family for \$104,000. In its order approving the sale, the court ordered the proceeds be deposited in Meine's trust account.

On April 20, 2006, Meine obtained an ex parte order approving the disbursement of ordinary fees to himself and Executor March. The order authorized

the payment of \$2391.98 each to Meine and March. On May 19, 2006, Swanson filed a notice of appeal regarding the disbursement of attorney fees. The Iowa Supreme Court dismissed the appeal as untimely. While the appeal was pending, Swanson filed other motions and discovery requests related to the award of attorney fees to Meine and March and to the proposed sale of the house to Troy March.

On June 26, 2006, Swanson filed a motion to surcharge March the difference between Smith's second offer and the actual sale price, a loss of \$3167.16. On May 31, 2007, March filed an application for extraordinary fees, reimbursement of funds advanced, and sanctions against Swanson. March claimed that Swanson caused the failure of the first sale, necessitating another sale, which resulted in more expenses, and that other litigation and objections raised by Swanson needlessly created more work and expense. March also sought reimbursement for money which she and her sister, Sharon Smith, had advanced to the estate to pay estate expenses. A portion of these advances came from joint bank accounts in the names of the decedent, March, and Sharon Smith.

At a July 13, 2007 hearing, Swanson argued that March had not acted responsibly in depositing the proceeds from the sale of the home in a noninterest-bearing account. March and Meine filed motions for extraordinary fees resulting from two hearings that took place in the process of selling the house.

The district court granted March and Meine's motions for extraordinary fees. The district court ordered that \$6480.19 in extraordinary fees be withheld

from Swanson's portion of the estate as a sanction against her for creating extraordinary work by filing unfounded motions. The district court denied Swanson's June 26, 2006 motion to surcharge March. Finally, the district court awarded reimbursement to Sharon Smith and March in the amount of advances made to the estate.

Swanson now appeals, arguing the district court erred in: (1) denying the motion to surcharge March; (2) awarding March and Meine extraordinary fees for litigation; (3) sanctioning Swanson by requiring payment of extraordinary fees out of her portion of the estate; (4) awarding ownership of the joint bank accounts to Sharon Smith and March; and (5) reimbursing Sharon Smith and March for advances to the estate.

II. Standard of Review

Our review of probate matters in equity is de novo. Iowa R. App. P. 6.4.

III. Motion to Surcharge Executor

A. Delay of Sale

Swanson argues that the district court should have surcharged March for delaying the sale of the house. Swanson asserts that March intentionally delayed the sale of the house in order to allow one of her sons to buy the house and another son to receive commission on the sale.¹ The record does not support this claim.

We find that March never acted to delay the sale of the house to the detriment of the estate. The estate accepted Troy March's offer because it was

¹ March's son could not receive commission on the sale until after he obtained his realtor's license on November 3, 2005.

the best offer and was a fair price for the house. Troy March was unable to buy the house because the appraisal did not support the price. Swanson was the only heir who refused to sell the house at the appraised value. The terms of the proposed sale to Troy March benefited the estate; Swanson's refusal to allow Troy March to purchase the property at a reasonable price did not benefit the estate. The only evidence explaining Swanson's objection to the first sale of the property is her testimony that it was "personal." Executor March should not be responsible for the \$3167.16 difference between the proposed sale to Troy March and the actual sale at a lower price.

B. Failure to Place Proceeds in Interest-Bearing Account

Swanson also argues that March should be surcharged for the loss of interest that resulted from her failure to put the proceeds from the sale of the home into an interest-bearing account until the estate could be closed. An executor is a fiduciary and has a duty to act in the best interests of the beneficiaries of the estate. *See Vos v. Farm Bureau Life Ins. Co.*, 667 N.W.2d 36, 52 (Iowa 2003).

On March 31, 2006, the district court ordered that the "net proceeds [from the sale of the home] shall be held in Dean Meine's trust account pending further order of this court." The money remained in Meine's trust account as ordered by the court until November 2007. In their closing arguments, March and Meine requested authority to invest the proceeds in an interest-bearing account. On November 14, 2007, a court order authorized Meine and March to invest the money in an appropriate interest-bearing account. On November 26, 2007, the

money was used to purchase a certificate of deposit earning four percent interest.

Swanson was aware of the court order requiring the proceeds to be placed in Meine's trust account. She had insisted that Meine keep the funds in his trust account as part of her acquiescence to the sale. March was not breaching her fiduciary duty to the estate by not reinvesting the funds, but merely following a court order. Swanson never asked the court to authorize the reinvestment of the funds in an interest-bearing account, nor did she ask March to do so. Thus, we affirm the district court's decision to overrule Swanson's motion to surcharge the executor.

IV. Extraordinary Fees to Meine and March

Swanson argues that the district court erred in awarding extraordinary fees to Meine and March. Attorneys and executors are allowed to recover extraordinary fees for services in connection with real estate and litigated matters. Iowa Code § 633.199 (2005). Meine and March incurred expenses in connection with Swanson's facially untimely appeal to the Iowa Supreme Court as well as her discovery requests which followed. Meine and March also incurred expenses stemming from the second real estate sale, which the district court found was a consequence of Swanson's actions.²

Swanson asserts that March's actions were not in the best interests of the estate, but were motivated by personal interests. The executor has the burden of proving that she acted in good faith and with just cause in engaging in

² The district court did not award extraordinary fees related to the attempted sale of real estate to Troy March.

proceedings. *Matter of Estate of Wulf*, 526 N.W.2d 154, 156 (Iowa 1994). No just cause exists where the interest is merely a personal matter. *Id.* An action benefits the estate if it increases or preserves the size of the estate. *Id.*

March's efforts to sell the house and defend against Swanson's litigation were for the benefit of the estate. The evidence shows that March acted reasonably in her attempts to sell the house. Though the potential buyer was March's son, nothing suggests that the sale was unfair to or would not have benefited the estate. Swanson's objections to the sale and the resulting litigation did not benefit the estate and were primarily personal. However, the personal nature of the dispute does not negate the fact that March had an obligation on behalf of the estate to respond to Swanson's objections. March was not acting merely out of personal interest, but primarily out of her obligation to the estate. Accordingly, we find that the district court's award of extraordinary fees to March was appropriate.

The district court also awarded extraordinary fees to Meine. Like March, Meine has the burden of showing good faith and just cause for the litigation. *In re Brady's Estate*, 308 N.W.2d 68, 72, (Iowa 1981). A thorough review of the record establishes that Meine's efforts in defending against Swanson's litigation were in good faith. Swanson argues that her attempt to appeal was necessary because Meine obtained an ex parte order allowing the disbursement of fees to himself and to March in violation of an oral agreement that he had made with Swanson during the phone conversation when she insisted that proceeds of the sale be deposited in Meine's trust account. We agree with the district court that, as Meine understood the oral agreement with Swanson, the proceeds from the

sale of the home were to be placed in a trust account and were not to be distributed to the heirs until Swanson had the opportunity to raise her claims to the court at a hearing. Meine did not believe that the agreement prohibited the customary disbursement of ordinary fees before the hearing. We find the award of extraordinary fees to Meine was appropriate.

V. Sanctions Against Swanson

Swanson argues that the district court erred in awarding the extraordinary fees as a sanction against her personally as opposed to imposing the award against the entire estate. The district court found that it had the authority to sanction Swanson under Iowa Rule of Civil Procedure 1.413(1), which allows the imposition of sanctions on a litigant who undertakes litigation for an improper purpose.

The Iowa Court of Appeals considered a similar issue in *In re Estate of Bruene*, 350 N.W.2d 209, 219 (Iowa Ct. App. 1984), where the court declined to deduct sanctions from the portions of specific heirs, but rather deducted attorney fees from the entire estate. In *Bruene*, one party sought to deduct attorney fees from nine parties' shares in the estate, arguing that the parties had raised a groundless malfeasance action in bad faith and the parties who raised the action should pay for the expenses related to it. *Bruene*, 359 N.W.2d at 219. The *Bruene* court ruled that "[a]lthough this is a close question, we decline to go that far" and deducted the fees from the entire estate. *Id.*

A review of the record establishes that Swanson had been put on notice that the extraordinary fees may be taken out of her share of the estate as a sanction for filing frivolous motions. In Meine's June 12, 2006 resistance to

Swanson's motion to rescind the order granting fees to attorney and executor, he requested that "Carol Swanson be sanctioned for filing this frivolous motion and that the costs by the executor to defend it and attorney fees be deducted from her share of the estate." Meine further requested that "sanctions be imposed on Carol Swanson for her conduct to date and that said sanctions be deducted from any inheritance that may later be allowed to her."

After being put on notice about the potential sanctions, Swanson filed a motion to surcharge the executor, two requests to produce, a written request for hearing times, a motion to compel, and an objection to the executor's request for extraordinary fees. Swanson's litigious behavior continued well after Meine requested that she be sanctioned for the expenses related to responding to her frivolous litigation. We find that the district court properly sanctioned Swanson for creating extraordinary work for both Meine and March and affirm the district court's decision to deduct extraordinary fees from Swanson's distribution of the estate.

VI. Ownership of Joint Bank Accounts

Swanson argues that the district court erred in determining ownership of three of decedent's accounts transferred to Sharon Smith and March at the time of death. Swanson asserts that, though Smith and March's names are on the signature card for the accounts, decedent did not wish for them to receive the proceeds of the accounts, but only added their names so that they would have access to her accounts to help her pay her bills. Swanson also asserts that the district court reminded the estate attorney to offer several exhibits related to the

accounts into evidence. Swanson suggests that the district court's behavior constitutes a fundamental error that affected the final decision.

Swanson failed to offer any evidence that would suggest the signature card was invalid. She does not assert fraud, duress, or mistake that would suggest that the clear language on the signature card was invalid. *In re Roehlke's Estate*, 231 N.W.2d 26, 28 (Iowa 1975). Nor does Swanson point to any specific conduct at trial that would suggest that the district court improperly took on an adversarial role in the trial. We find that the district court correctly found that the three financial accounts belong to March and Smith. Because those joint accounts contained their funds, once their mother died, they were entitled to reimbursement for money taken out of those accounts for the estate.

VII. Reimbursement of Smith and March for Advances to the Estate

Swanson argues that Smith and March's payments on behalf of the estate should be treated as gifts to the estate and, therefore, Smith and March should not be reimbursed for these advances. Swanson has the burden of proving that March and Smith intended their payments to be a gift. *In re Kneeb's Estate*, 70 N.W.2d 539, 542 (Iowa 1955). Swanson has offered no evidence to prove that March and Smith intended to make gifts to the estate. Smith and March's efforts to seek reimbursement suggest that they did not intend to gift the money to the estate, but were making payments on behalf of the estate while waiting for the estate's main asset, the house, to be sold.

VIII. Conclusion

We find that the district court properly denied Swanson's motion to surcharge the executor for the delay in selling the house and failure to put the

proceeds of the sale into an interest-bearing account. The district court's award of extraordinary fees to March and Meine was reasonable and the fees were properly deducted from Swanson's share of the estate. The district court was correct in finding that the three financial accounts belonged to Smith and March and in reimbursing them for their advances on behalf of the estate.

AFFIRMED.

Miller, J. and Potterfield, J. concur. Sackett, C.J., concurs specially.

SACKETT, C.J. (concurring specially)

I concur specially. Because I believe the result is equitable, I, too, would affirm.