

IN THE COURT OF APPEALS OF IOWA

No. 9-549 / 08-1961
Filed August 6, 2009

**IN THE MATTER OF THE ESTATE OF
BONNIE JONES, Deceased,**

IOWA DEPARTMENT OF HUMAN SERVICES,
Respondent-Appellee,

**JERRY JONES, DONALD JONES,
and RONALD JONES,**
Applicants-Appellants.

Appeal from the Iowa District Court for Hardin County, Timothy J. Finn,
Judge.

The administrators of an estate appeal the district court's calculation of the
allowable probate attorney fees. **REVERSED AND REMANDED.**

Lynn J. Wiese of Barker, McNeal, Wiese & Holt, Iowa Falls, for appellants.

Thomas J. Miller, Attorney General, and Barbara E.B. Galloway, Assistant
Attorney General, for appellee.

Considered by Vaitheswaran, P.J., and Potterfield and Mansfield, JJ.

MANSFIELD, J.

The administrators of an estate appeal the district court's calculation of the maximum ordinary fees that can be paid to a probate attorney under Iowa Code sections 633.197 and 633.198 (2007). Specifically, the administrators contend the term "gross assets of the estate listed in the probate inventory" as used in section 633.197 should include the entire value of real estate transferred by the decedent to her children prior to her death, where the decedent reserved a life estate. We agree and therefore reverse and remand.

I. Background Facts and Proceedings

On October 13, 1997, Bonnie Jones deeded real estate located in Hardin County to her children, reserving for herself an unqualified life estate. The deed was recorded with the Hardin County Recorder. In July 2004, the Iowa Department of Human Services (DHS) Medicaid program began paying bills due to the Medical Assistance Program on behalf of Jones. These were principally bills for long-term care. The DHS Medicaid program reimbursed health care providers in the total amount of \$93,524.89 for Jones's care. Jones died intestate on September 29, 2007. The district court appointed her three sons as the administrators of her estate.

On December 26, 2007, DHS filed a claim in probate against Jones's estate in the amount of \$93,524.89 for the expenses paid on her behalf. On January 3, 2008, the administrators submitted a report and inventory showing that Jones's "Iowa gross estate" was \$190,606.08. This amount included the Hardin County real estate to which they assigned a date-of-death valuation of

\$180,000.¹ In addition to the real estate, the inventory reported \$1112.38 in cash, prepaid funeral expenses of \$9243.70, and some miscellaneous personal property with a stated value of \$250.

Under Iowa law, DHS had the right to attempt to collect its \$93,524.89 debt from Jones's estate, including the value of any "retained life estates." See Iowa Code § 249A.5(2)(c). However, there was no dispute that Jones's estate, after assigning a value to the life estate, was not nearly enough to cover the \$93,524.89 debt. Moreover, certain other estate obligations, including the probate attorney fees, take priority by law over DHS's recovery. See Iowa Code § 633.425(2) and (7) (stating that "costs of administration" have priority over "[a]ny debt for medical assistance paid pursuant to section 249A.5, subsection 2"). Thus, after netting out those obligations, DHS took the position that it was entitled to a payment of \$13,810.59.

The administrators argued that DHS had under-calculated the probate attorney fees and, thus, overstated the payment to which it was entitled. The administrators insisted that fees should be based on the complete probate inventory of \$190,606.08, which reflected the *entire* value of the real property, even though possession of that property passed to Jones's children automatically at the time of her death and, except for the value of the life estate, that property was not available to satisfy the DHS debt. DHS could not accept that position. As DHS's attorney put it, "I can't get over the concept of charging fees on an asset that is not part of the decedent's 'estate.'"

¹ The inventory form required a listing of "all transfers in which the decedent retained a life estate or interest, or which were to take effect in possession or enjoyment at death."

On July 22, 2008, the administrators filed an application for hearing on DHS's claim. DHS filed a resistance to the application to clarify that its claim was not in dispute, only the calculation of the attorney fees.

Following a telephonic hearing, the district court issued a written ruling concluding "the amount to be included in the valuation of the 'gross estate' under section 633.197 is only the value of the life estate itself, not the value of the remainder." Accordingly, the court determined "that the proper manner to calculate the attorney fees in this case is to exclude the \$180,000 remainder interest the executor seeks to use for calculation of attorney fees."²

The administrators appeal, contending the court erred in excluding the date-of-death value of the real estate from the calculation of the potential probate attorney fees under Iowa Code sections 633.197 and 633.198. For the following reasons we agree with the administrators' reading of the statute, and remand for further proceedings.

II. Standard of Review

Initially, we note the administrators and DHS disagree as to the standard of review. Ironically enough, DHS, which prevailed below, contends our review is de novo; while the administrators, who are the appellants, urge that our review is for errors at law. Probate proceedings concerning the costs of estate administration are equitable in nature. Iowa Code § 633.33; *In re Estate of Petersen*, 570 N.W.2d 463, 465 (Iowa Ct. App. 1997). The costs of

² There appears to have been some confusion below as to whether \$180,000 was the full value of the property or just the value of the remainder interest. We believe the record is clear that \$180,000 represents the date-of-death value of the whole "bundle of sticks."

administration include attorney fees. Iowa Code § 633.3(8). Thus, our review is de novo. Iowa R. App. P. 6.4; *In re Estate of Wulf*, 526 N.W.2d 154, 156 (Iowa 1994). In any event, though, this appeal concerns an issue of statutory construction so the analysis would be unaffected by the standard we adopt. See *Auen v. Alcoholic Beverages Div.*, 679 N.W.2d 586, 590 (Iowa 2004) (stating the goal of statutory construction is to determine legislative intent).

III. Analysis

Iowa Code section 633.198 provides the personal representative's attorney shall be allowed "such reasonable fee as may be determined by the court, for services rendered, but not in excess of the schedule of fees herein provided for personal representatives." The compensation for personal representatives is, in turn, set forth in section 633.197, which provides that a personal representative shall be allowed such reasonable fees as determined by the court but "not in excess of the following commissions upon the *gross assets of the estate listed in the probate inventory . . .*" (Emphasis added.)

The question presented by this case is what the term "gross assets of the estate listed in the probate inventory" means. Does it include the entire value of real property when the property was actually transferred years before, subject to a life estate in the decedent? We believe it does, because the entire value of the property is required to be listed in the probate inventory.

Section 633.361 of the probate code creates the obligation to file a probate inventory. This inventory is required to include not only the decedent's property at the time of the death, but "[a] listing of all other items, with estimated

values, which are subject to Iowa inheritance tax or federal estate tax.” Iowa Code § 633.361(12). Section 450.3 identifies the property to be included in the calculation of Iowa inheritance tax, subject to certain exemptions, and includes any property passing:

By deed, grant, sale, gift or transfer made or intended to take effect in possession or enjoyment after the death of the grantor or donor. A transfer of property in respect of which the transferor reserves to the transferor *a life income or interest* shall be deemed to have been intended to take effect in possession or enjoyment at death, provided, *that if the transferor reserves to the transferor less than the entire income or interest, the transfer shall be deemed taxable thereunder only to the extent of a like proportion of the value of the property transferred.*

Iowa Code § 450.3(3) (emphasis added).

Here, Jones made a transfer as described by Iowa Code section 450.3(3). She deeded the property to her children, with transfer of possession to occur at the time of her death, while reserving unto herself the entire life estate without limitation. Therefore, under section 450.3(3), the entire value of the subject property, i.e., both the life estate and the remainder interest, was part of the potential Iowa inheritance tax calculation. Section 633.361(12) obligated the executors to list the property in the probate inventory—and the executors in fact did so. Accordingly, we believe the maximum ordinary fee calculation should take into account the entire value of the Hardin County real property, all of which belonged in the “probate inventory.”

The district court relied on *In re Estate of English*, 206 N.W.2d 305, 309-10 (Iowa 1973), in holding that the “gross assets of the estate listed in the probate inventory” did not include most of the value of the real property

transferred by Jones. However, we respectfully believe the court misapplied *English*. In *English*, the transferor of the real property retained only a \$600 per year annuity instead of a full life estate. *English*, 206 N.W.2d at 307. Accordingly, the supreme court found that the last clause of section 450.3(3) applied and only part of the value of the real property was subject to inheritance tax. *Id.* at 310; see Iowa Code § 450.3(3) (“[P]rovided, that if the transferor reserves to the transferor less than the entire income or interest, the transfer shall be deemed taxable thereunder only to the extent of a like proportion of the value of the property transferred.”) Here, by contrast, the entire value of the real estate was reserved to the transferor for the duration of her lifetime, so the proviso at the end of section 450.3(3) does not apply.

Rather than attempting to defend the district court’s reasoning, DHS raises here (and raised below) several other arguments, none of which we find persuasive. First, DHS suggests that the controlling term “gross assets of the estate listed in the probate inventory” refers to something less than the whole “probate inventory.” We disagree. In *In re Estate of Lynch*, 491 N.W.2d 157, 159 (Iowa 1992), the supreme court specifically held that in making the maximum attorney fee calculation, “[t]he gross assets of the estate listed in the probate inventory for inheritance tax purposes include all property passing by any method of transfer specified in Iowa Code section 450.3” *Lynch*, 491 N.W.2d at 159; accord *In re Estate of Martin*, 710 N.W.2d 536, 540 (Iowa 2006). Hence, any property passing by a method of transfer listed in section 450.3 is not only part of the “probate inventory,” it is also part of the “gross assets of the estate

listed in the probate inventory” for maximum fee calculation purposes. This means, again, that the entire \$180,000 value of the real property should have been utilized in the maximum attorney fee calculation.

Second, DHS points out that in 2005, the legislature amended section 633.197.³ The statute used to read, “gross assets of the estate listed in the probate inventory *for Iowa inheritance tax purposes.*” Iowa Code § 633.197 (2005) (emphasis added). Now the words “for Iowa inheritance tax purposes” have been eliminated. See Iowa Code § 633.197 (2007). DHS posits that this amendment must have meant *something*, and perhaps it means that the base for calculating maximum attorney fees is smaller than it was before. We disagree. We believe the amendment was intended to eliminate possible redundancy and confusion. Prior to the amendment, the argument was made that only assets that actually generate an inheritance tax could be included in the base for attorney fee calculation purposes. In *Martin*, applying pre-2005 law, the supreme court rejected that argument. It emphasized that an asset belonged in the base if it passed by any method of transfer specified in Iowa Code section 450.3 “without regard to whether the included property is subject to the inheritance tax.” *Martin*, 710 N.W.2d at 541. The 2005 amendment can be viewed as an effort to clarify the law and eliminate the argument that the supreme court had to address in *Martin*. The point remains: if an asset passes by a method of transfer described in section 450.3, as the real property did here, its entire value should be taken into account for purposes of the maximum attorney fee calculation.

³ Both the *Lynch* and the *Martin* cases were decided under the old language.

Third, DHS suggests that it is somehow unfair for the “estate” that is used for the maximum ordinary attorney fee computation under Iowa Code section 633.197 to be different from the “estate” that is available to pay its claim under section 249A.5(2)(c). We believe this argument is properly addressed to the legislature. We are bound by the clear language of Iowa Code sections 633.197 and 249A.5(2)(c) respectively.

Lastly, DHS argues that the district court’s ruling may be affirmed as an exercise of “discretion” regarding allowable attorney fees. We agree that the district court has considerable discretion in allowing compensation to administrators and their attorneys. *In re Estate of Engelkes*, 256 Iowa 213, 216, 127 N.W.2d 111, 113 (1964). The exercise of discretion must be reasonable and not arbitrary. *Id.* The burden of showing the services rendered and value thereof rests upon the claimant. *Id.* The court must “determine what were reasonable fees for the services rendered, but not to exceed the named percentages.” *Id.* at 218, 127 N.W.2d at 114. The problem here is that the district court did not exercise its discretion, but believed that a combination of Iowa Code sections 450.3, 633.361, and 633.197 *precluded* an award of attorney fees based on the entire \$180,000 value of the property. Because we disagree with that legal conclusion, we must reverse and remand so the district court can now exercise its discretion.

IV. Conclusion

For all the reasons set forth above, we conclude the district court erred in failing to include the entire value of the real property in its determination of the

ceiling on allowable attorney fees under Iowa Code section 633.197. We reverse and remand the case to the district court for further proceedings in accordance with this opinion.

REVERSED AND REMANDED.