

IN THE COURT OF APPEALS OF IOWA

No. 9-922 / 09-0346
Filed December 17, 2009

**IN THE MATTER OF THE ESTATE OF
MARJORIE MAE KERNS, Deceased,**

MARLENE DOYLE,
Plaintiff-Appellant.

Appeal from the Iowa District Court for Buchanan County, Jon C. Fister,
Judge.

Marlene Doyle appeals from the district court's order approving the sale of
real estate to Daryl Rex Kerns and the deed in partial fulfillment of the contract.

AFFIRMED.

Peter C. Riley of Tom Riley Law Firm, P.L.C., Cedar Rapids, for appellant.

Cheryl Gustin, Independence, appellee pro se.

Richard Kerns, Escondido, California, appellee pro se.

D. Raymond Walton, Waterloo, and A.J. Flickinger of Craig, Wilson &
Flickinger, Independence, for appellee estate.

William C. Brown and Amy A. Adams of Brown, Winick, Graves, Gross,
Baskerville & Schoenebaum, P.L.C., Des Moines, and Theresa Hoffman,
Waterloo, for appellee Daryl Kerns.

Considered by Eisenhauer, P.J., Potterfield, J., and Mahan, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

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

Marjorie Kerns died testate owning substantial interests in Iowa farmland. Marjorie's last will and testament named the youngest of her four children, Daryl Rex Kerns (Rex), as executor of the will. The will and its two codicils also granted Rex an option to buy estate farmland at its value for Iowa Inheritance Tax purposes "with an interest rate equal to the rate charged by Farm Credit Services on real estate mortgages in Buchanan County, Iowa, similar in length to the contract provided herein." Rex gave timely notice of his election to execute this option.

Along with the attorney for the estate, Alanson Flickinger, Rex selected Ralph Kremer to appraise the property. Rex did not inform Kremer that he had an option to buy the property based on the appraised price. Rather, Rex informed Kremer the appraisal was for estate purposes and the family needed a "good fair market appraisal" because it was likely the Internal Revenue Service would review the appraisal. Kremer testified that although he was not aware that his appraisal would be used in determining the price at which Rex could purchase the land, he did not believe Rex tried to influence him to come in with a lower appraisal and he believed his appraisal was fair.

On June 21, 2004, Rex, as executor-seller and as buyer, signed a real estate contract to purchase the property based on the appraised value, less a reduction for special use. The contract provided for interest at 3.15%. On September 14, 2004, Rex, as executor-grantor, deeded to himself the acreage

on which his parents had lived. Rex never sought court approval for his actions in connection with the June 21 contract or the September 14 deed.

On March 4, 2005, Marlene Doyle, Rex's older sister, filed an amended petition for declaratory judgment. Marlene's petition sought: a declaration of rights that the estate was not bound by the appraised value; a determination of the appropriate date for selection of an interest rate and of the proper rate; and "that the Court invalidate and set aside the June 21, 2004 real estate contract, and direct that the Executor of the Estate of Marjorie Mae Kerns enter into a new contract with a value as determined by the Court."

The district court found that Rex had engaged in self-dealing without court approval and notice to all interested parties as required by Iowa Code section 633.155 (2003). However, the district court approved Rex's contract and deed. In a ruling pursuant to Iowa Rule of Civil Procedure 1.904(2) filed August 22, 2006, the district court found that the interest rate should be a fixed rate of 5.25%. Marlene appealed to this court, and we found that Rex's self-dealing without following proper procedure invalidated the June 21 contract and the September 14 deed. See *In re Estate of Kerns*, No. 06-1540 (Iowa Ct. App. Nov. 15, 2007).

Accordingly, on April 1, 2008, Rex filed a petition for authority to sell real estate and gave proper notice in compliance with Iowa Code section 633.155, again attempting to exercise the option to purchase granted to him in Marjorie's will. Marlene objected; the other two siblings/beneficiaries consented. The district court granted Rex's petition over Marlene's objection and approved the sale of real estate and the deed.

Marlene appeals from the district court's order, arguing: (1) the district court erred in failing to give preclusive effect to this court's prior decision invalidating the identical transaction; and (2) the district court's decision violates public policy.

II. Standard of Review

We review this matter tried in equity *de novo*. *In re Estate of Rutter*, 633 N.W.2d 740, 746 (Iowa 2001). We give weight to the district court's findings of fact, especially concerning the credibility of witnesses, but we are not bound by them. *Id.*

III. Claim Preclusion

Marlene argues our prior decision precludes any further attempt by Rex to acquire the property from the estate. We agree with the district court that claim preclusion does not defeat Rex's 2008 application. This court previously invalidated Rex's 2004 contract and deed because he was "self-dealing without following the proper procedure."¹ *In re Estate of Kerns*, No. 06-1540 (Iowa Ct. App. Nov. 15, 2007). This court invalidated the contract and deed at issue not because their terms were invalid, but because Rex had not followed proper procedure as required by Iowa Code section 633.155. *See id.* Thus, Rex's later petition following proper procedure and using the correct interest rate does not present the same cause of action previously presented to this court. *See Iowa Coal Mining Co. v. Monroe County*, 555 N.W.2d 418, 440-41 (Iowa 1996) (finding that the party asserting claim preclusion must establish that the former case

¹ This court recognizes its error in finding previously that Rex failed to provide Marlene with notice of his election to exercise the option.

involved the same cause of action, which is determined by examining the protected right, alleged wrong, and relevant evidence). We agree with the district court's conclusion that our previous decision precludes Rex only from litigating any issues related to the validity of any contracts or deeds executed absent strict compliance with Iowa Code section 633.155.

IV. Public Policy

Marlene also argues the district court's order violates public policy by allowing an executor whose self-dealing was invalidated in prior litigation the opportunity to make a second application for court approval. We agree with the district court's statement that

it is the court's view that it does not violate public policy for a fiduciary who has innocently and mistakenly neglected to comply with Iowa Code [section] 633.155 to comply with those procedures thereafter and obtain a valid contract and deed consistent with a testator's testamentary intent.^[2]

Further, the district court's order gave Marlene exactly the remedy she sought in her 2005 amended petition for declaratory judgment. Marlene's prayer for relief asked that the court invalidate and set aside the June 21 real estate contract and direct Rex to enter into a new contract that complied with her requests regarding the appraisal and interest rate. The court invalidated the June 21 real estate contract and Rex entered into a new contract that complied with the district court's decisions regarding the appraisal and interest rate. We

² We agree with the district court's findings that Rex's failure to comply with section 633.155 was not a result of fraud or bad faith.

have considered all of Marlene's claims and determine they are without merit.

We therefore affirm the district court.

AFFIRMED.