

IN THE COURT OF APPEALS OF IOWA

No. 9-939 / 09-0665
Filed December 30, 2009

**IN RE THE ESTATE OF
MARGARET A. DENZLER, Deceased,**

JEFFREY A. DENZLER,
Intervenor-Appellant,

vs.

MARILYN KOCH and STEPHEN DENZLER,
Intervenors-Appellees.

Appeal from the Iowa District Court for Iowa County, Patrick R. Grady,
Judge.

Jeffrey Denzler challenges his disqualification as the nominated executor
of the estate of Margaret A. Denzler. **AFFIRMED.**

Donald Diehl, Coralville, for appellant.

James Claypool, Williamsburg, for appellee.

Considered by Vogel, P.J., and Doyle and Mansfield, JJ.

VOGEL, P.J.

Jeffrey Denzler challenges his disqualification as the nominated executor of the estate of Margaret A. Denzler.¹ He asserts his poor relationship with his two siblings does not support disqualification. In questions involving the removal of an executor, we review the entire record under an abuse of discretion standard. *In re Estate of Randeris*, 523 N.W.2d 600, 604 (Iowa Ct. App. 1994).

Margaret Denzler passed away February 7, 2009. She and her husband Roy, who died in June 2008, had three children, Jeffrey Denzler, Marilyn Koch, and Stephen Denzler. Margaret's last will and testament nominated Jeffrey to be the executor, should Roy predecease her.² The will directed Margaret's estate be distributed equally to the three children. Upon Margaret's death, Jeffrey filed a petition for probate of will, seeking his appointment as executor. Marilyn and Stephen immediately filed an objection to this appointment. This objection came after years of friction between Jeffrey and his siblings.

Prior to Roy's death, Marilyn moved into her parents' home in order to care for them. In March 2008, both Roy and Margaret were moved to a nursing home. Stephen and Marilyn complained that Jeffrey did not sufficiently communicate with them regarding their parents' care and financial affairs. They alleged Jeffrey's depression had caused him to turn his parents' financial affairs over to his wife, Carole. Tension escalated to the point that Jeffrey did not attend his mother's funeral, due to Marilyn and Stephen's presence.

¹ Jeffrey raised several other issues to challenge the court's order, but all are subsumed in the appropriateness of the district court's discretionary call.

² Jeffrey was also Margaret's attorney-in-fact, prior to her death.

The district court found that while Jeffrey was capable of carrying out the duties as executor, his inability to communicate with his siblings would cause the estate to be run inefficiently, and lead to further litigation and expense. Therefore, the court disqualified Jeffrey as executor and ordered an independent fiduciary be executor. Jeffrey appeals.

Jeffrey asserts the court abused its discretion in disqualifying him as executor. “Any natural person of full age, who is a resident of this state, is qualified to serve as a fiduciary, except . . . a person whom the court determines to be unsuitable.” Iowa Code § 633.63(1) (2009). Unsuitability may be based upon grounds for believing that an executor’s continuance in office will be likely to render the execution of the will or the administration of the estate difficult, ineffective, or unduly protracted. *In re Estate of Ragan*, 541 N.W.2d 859, 861 (Iowa 1995). Actual dereliction in duty need not be shown. *Id.* A conflict of interest may support removal as well as unwarranted hostility between the executor and beneficiaries. *Randeris*, 523 N.W.2d at 606.

The district court studied the dynamics of the relationship of Jeffrey to Marilyn and Stephen, in order to determine whether the estate would be well served with Jeffrey as executor:

There is no question in this Court’s mind that Jerry is fully capable to carry out the duties of executor.^[3] However, the task of administering this estate is going to require cooler heads than are present among these siblings. It is this Court’s opinion that, even though an independent fiduciary may, in the long run, cost the estate more, it will result in a more efficient, less court-intensive administration than is likely should Jerry remain as executor. The Court does not place total responsibility for this at Jerry’s feet. However, the Court does find a significant reasonable doubt that,

³ Jeffrey is also referred to as Jerry.

based on the personalities of these siblings, the estate will not be administered efficiently, dispassionately or without protracted litigation if the nominated executor serves.

It is clear the district court could not foresee a way for Jeffrey to serve as executor without prompting conflict with his siblings. We agree with the district court that the past and ongoing hostility between Jeffrey and Marilyn and Stephen coupled with Jeffrey's inability to communicate with them would likely render the administration of Margaret's estate difficult, ineffective, and unduly protracted. *Ragan*, 541 N.W.2d at 861. While the district court found Jeffrey to have the capability to administer the estate, the hostility between Jeffrey and his siblings would destroy the trust and confidence necessary for the discharge of his duties as executor of Margaret's estate. *Randeris*, 523 N.W.2d at 606. Therefore, we find the district court did not abuse its discretion in disqualifying Jeffrey from serving as executor of the estate.⁴

AFFIRMED.

⁴ We note noncompliance with the rules of appellate procedure, requiring the name of each witness whose testimony is included in the appendix to appear at the top of each page where the witness's testimony appears. See Iowa R. App. P. 6.905(7)(c).