

STATE OF MICHIGAN
COURT OF APPEALS

KATHLEEN LUPIN,

Appellant,

v

SUZANNE DENSMORE, Individually and as
Personal Representative of the Estate of ROY W.
YOUNGMARK, Deceased,

Appellees.

UNPUBLISHED

April 6, 2001

No. 218825

Oakland Probate Court

LC Nos. 97-255678-IE,

97-259394-CZ

Before: Talbot, P.J., and Sawyer and F.L. Borchard*, JJ.

MEMORANDUM.

Plaintiff appeals as of right from the family court's order denying her motion to enjoin distribution and for an evidentiary hearing. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff and decedent resided in a home owned by decedent. Decedent bequeathed his entire estate to defendant, his sister. A dispute arose regarding plaintiff's continued occupancy of the home and her alleged taking of certain of the home's contents. Plaintiff filed a claim against the estate. Prior to trial, the parties reached a settlement which provided for a payment to plaintiff in exchange for plaintiff's dismissal of the suit. Plaintiff agreed to remove only her clothing, personal effects, and certain specified items from the home. The settlement agreement provided that the estate would be entitled to take an offset from the settlement proceeds due plaintiff in the event that plaintiff failed to fulfill her obligations under the agreement.

The estate withheld \$5,000 from the sum due plaintiff as a result of a dispute over damage to the home and certain missing items of property. Plaintiff's counsel failed to respond to several letters from counsel for the estate seeking return of the property. After being notified that the estate would be distributed and closed, plaintiff moved for an order enjoining distribution and for an evidentiary hearing. The family court enjoined distribution pending a hearing on the motion. Following a hearing the court denied the motion for a full evidentiary hearing, concluding that no grounds existed for such a proceeding. The court granted the estate the funds withheld from plaintiff's payout, and ordered the estate closed.

* Circuit judge, sitting on the Court of Appeals by assignment.

Plaintiff argues that the family court erred and abused its discretion by denying her motion to enjoin distribution and for an evidentiary hearing, and by granting the estate the \$5,000 withheld from her payout. We disagree and affirm the family court's decision. The settlement agreement provided that the estate was entitled to take an offset from the proceeds due plaintiff in the event that plaintiff failed to fulfill her obligations under the agreement. Plaintiff did not dispute that she failed to return certain property to the estate, and did not substantiate the claim that the property could be returned. Essentially, the family court denied plaintiff's motion for an evidentiary hearing because it found that plaintiff failed to show that she could make a legitimate claim on the property belonging to the estate, or that the estate was unjustified in withholding the sum of \$5,000. Plaintiff cites no persuasive authority to support her assertion that she was entitled to an evidentiary hearing under the circumstances. Furthermore, plaintiff has failed to establish that the family court's decision to allow the estate to retain the \$5,000 withheld from plaintiff's payout constituted an abuse of the court's inherent power to sanction a party. *Brenner v Kolk*, 226 Mich App 149, 160-161; 573 NW2d 65 (1997).

Affirmed.

/s/ Michael J. Talbot
/s/ David H. Sawyer
/s/ Fred L. Borchard