COURT OF APPEALS
DECISION
DATED AND FILED

June 28, 2013

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2012AP1835 **Cir. Ct. No. 2009PR3**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

IN RE THE ESTATE OF DOUGLAS EDWARD ERICKSON:

AARON ANDRE,

APPELLANT,

V.

COREY ERICKSON, KAYLEE ERICKSON, MORGAN ERICKSON, AND ALAN ROBERTSON, PERSONAL REPRESENTATIVE OF THE ESTATE OF DOUGLAS EDWARD ERICKSON,

RESPONDENTS.

APPEAL from a judgment of the circuit court for Trempealeau County: JOHN A. DAMON, Judge. *Affirmed*.

Before Hoover, P.J., Mangerson, J., and Thomas Cane, Reserve Judge.

¶1 PER CURIAM. Aaron Andre appeals a judgment dividing the initial $115,000 of the Estate of Douglas Erickson among Douglas's other children, Corey, Kaylee, and Morgan Erickson. Andre contends their division request constitutes an untimely claim under WIS. STAT. §§ 859.01 and 859.02.[1] He also challenges the factual support for the judgment. We reject Andre's arguments and affirm.

BACKGROUND[2]

¶2 Douglas Erickson, at his death, owned a $400,000 life insurance policy. This policy was purchased before Douglas and his former wife, Michelle Erickson, divorced. The judgment of divorce included the following provision: "Both parties shall maintain in full force and pay the premiums on all life insurance presently in existence on their lives or obtain comparable insurance with the minor children of the parties named as sole and irrevocable primary beneficiar[ies] ...." The judgment further stated, "Neither of the parties shall borrow against any such policy or use any such policy as collateral or impair its value in any manner without the express written consent of the other or order of the Court."

¶3 Before the parties divorced, Douglas collaterally assigned $285,000 of the life insurance policy to the State Bank of Arcadia. Despite the divorce judgment, Douglas refinanced the loan after the divorce and collaterally assigned the remaining $115,000 of the life insurance policy without consent. Following

[1] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

[2] The facts in the first two paragraphs of this section are stipulated.

Douglas's death, the bank received the entire value of the policy and the proceeds were applied to the outstanding balances.

¶4 At probate, the circuit court designated May 20, 2009 as the deadline for creditors to file claims against the Estate. On February 9, 2011, Michelle filed an action challenging the lien interest of the bank in the life insurance proceeds. The court determined Michelle's claim was time-barred under WIS. STAT. §§ 859.01 and 859.02.

¶5 On January 6, 2012, Corey, Kaylee, and Morgan Erickson, the three children of Douglas's and Michelle's marriage (the Erickson children), filed a "Motion for Declaratory Judgment to Determine Division of the Estate." The Erickson children requested that the first $115,000 of Douglas's estate be divided solely among them, to represent their expected insurance policy proceeds had Douglas complied with the divorce judgment. They proposed that the remainder of the estate be divided equally among them and Andre, Douglas's child from another relationship. Andre objected to the motion, characterizing it as "nothing other than [an untimely] claim against the estate ...."

¶6 The circuit court concluded the Erickson children's motion was not a claim against the Estate because the children were heirs. It concluded it had authority to equitably divide the Estate and, after considering the equities, granted the children's motion.

DISCUSSION

¶7 Claims against an estate filed after the deadline set by the court are generally barred. *See* WIS. STAT. §§ 859.01, 859.02(1). Andre argues the Erickson children's motion should be construed as a claim against the Estate, and

must be dismissed as untimely filed. In Andre's view, this is so for three reasons: first, their request essentially constitutes a claim for breach of contract, which is subject to the time limitations established by § 859.01, *see* ***Landwehr v. Citizens Trust Co.***, 110 Wis. 2d 716, 719, 329 N.W.2d 411 (1983); second, the Erickson children's motion is duplicative of Michelle's untimely claim; and third, granting the motion would be inequitable to Andre. We reject each of these arguments.

¶8 As WIS. STAT. § 859.02(1) makes clear, claims against an estate are ordinarily brought by creditors of the decedent. Thus, the statute bars untimely claims "against the estate, the personal representative and the heirs and beneficiaries of the decedent." Accordingly, the statute protects heirs in the same manner as the estate itself. It would be highly unusual for the statute to simultaneously protect the heirs from claims *and* restrict their ability to recover from the estate. We decline to construe the statute in that manner. *See* ***State ex rel. Kalal v. Circuit Court for Dane Cnty.***, 2004 WI 58, ¶46, 271 Wis. 2d 633, 681 N.W.2d 110 (statutory language interpreted reasonably, to avoid absurd or unreasonable results).

¶9 The Erickson children are not creditors. They are Douglas's heirs at law and, their motion notwithstanding, are entitled to a portion of his estate. *See* WIS. STAT. § 852.01. As such, their motion is not a claim against the Estate, per se, but a request to divide it in a particular manner. Andre has not cited, and our independent research has not uncovered, any case law requiring an heir to file a claim to secure an equitable distribution of the estate corpus. *See* ***Richardson v. Richardson***, 223 Wis. 447, 459, 271 N.W. 56 (1937) (confirming authority of

probate court to "recognize and apply equitable rules and principles in so far as they are applicable to matters relating to the settlement of estates of decedents").[3] Although Andre attempts to confine ***Richardson*** to the facts of that case, which involved a contract of distribution among the heirs, none of the court's statements so limit the scope of the court's equitable authority.

¶10 Having concluded that, as heirs, the Erickson children could properly petition the circuit court for an equitable distribution of the estate corpus, Michelle's action is easily distinguishable. As Douglas's ex-wife, Michelle is not an heir, and was therefore not similarly situated to the Erickson children. *See* WIS. STAT. § 852.01. Thus, the fact that the circuit court denied Michelle's claim as untimely is irrelevant, and did not preclude the Erickson children from subsequently seeking an equitable division of the estate.

¶11 Finally, we address Andre's contention that the court erroneously exercised its equitable discretion. Andre essentially contends that granting the Erickson children's motion was inequitable to him because it "result[ed] in Aaron Andre, the fourth heir of the estate, being treated unfairly as his share of the estate assets are reduced." However, the mere fact that Andre was disadvantaged by the court's decision does not mean the court erroneously exercised its discretion. Had the court denied the motion, the Erickson children would have been left without a remedy for their father's misdeeds. "An appeal to equity requires a weighing of

[3] This is not to say that an heir *cannot* file a claim against the estate. In a factually similar case, the heir did just that, alleging breach of contract where her father failed to make premium payments on an insurance policy he was obligated to keep in effect under a divorce decree. *See* ***Zellmer v. Sharlein***, 1 Wis. 2d 46, 47-48, 82 N.W.2d 891 (1957). There, the heir successfully thwarted impossibility and statute of limitations defenses and was permitted to recover the policy amount from her father's estate. ***Id.*** at 51-52.

the factors or equities that affect the judgment—a function which requires the exercise of judicial discretion." ***Mulder v. Mittelstadt***, 120 Wis. 2d 103, 115, 352 N.W.2d 223 (Ct. App. 1984).

¶12 Here, it was within the circuit court's purview to conclude the injustice to the Erickson children was greater than the harm to Andre. As the circuit court recognized, Wisconsin has a strong public policy in favor of properly supporting the children of a dissolving marriage. *See* ***Ondrasek v. Tenneson***, 158 Wis. 2d 690, 695, 462 N.W.2d 915 (Ct. App. 1990). Further, the court cited ***Richards v. Richards***, 58 Wis. 2d 290, 291-93, 206 N.W.2d 134 (1973), in which the children of the decedent brought suit against his second wife to disgorge proceeds from an insurance policy the decedent was required, but failed, to keep in his children's name pursuant to a divorce judgment. The circuit court here acknowledged that ***Richards*** was not a probate case, but it was nonetheless persuaded by our supreme court's conclusion in ***Richards*** that "the children of the deceased were equitably entitled to the proceeds of the insurance policy and that a constructive trust should be imposed on the proceeds for their benefit." ***Id.*** at 293-94. ***Richards*** establishes that a decedent's wrongful conduct, in violation of a divorce decree, supplies a proper foundation for equitable relief. ***Id.*** at 298-99.

¶13 Andre also asserts that the Erickson children failed to present evidence proving the existence of an insurance policy and that they were named beneficiaries. Andre argues that the probate court "cannot simply disperse insurance policy proceeds based upon the Erickson children's assertion that they are named beneficiaries under the policy and are entitled to benefits."

¶14 The problem with this argument is that the policy's actual designation of beneficiary is irrelevant to the Erickson children's motion. The

stipulated facts establish that the divorce judgment obligated Douglas to maintain unencumbered life insurance for his children's benefit. Douglas violated this provision by using the policy as collateral, thereby depriving the children of their expected support benefit under the divorce decree. Andre's "lack of proof" arguments regarding the existence, and beneficiaries, of the insurance policy border on frivolous.

¶15 Andre also argues the court lacked a basis to establish the value of the policy proceeds available to any beneficiaries. He states, "Without the evidence to establish the terms of the collateral assignment and the debt existing at the time of the divorce, the Court does not have a factual basis to support its determination of the value of the policy benefits." We disagree. The stipulated facts establish that $285,000 of the $400,000 life insurance policy was collateralized at the time of the divorce. Andre's suggestion that the bank was somehow entitled to more than that amount—and the Erickson children to less than the remaining $115,000—is baseless.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.