

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**August 19, 2003**

Cornelia G. Clark  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 02-3107**

**Cir. Ct. No. 00 PR 2128**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**IN RE THE ESTATE OF RICHMOND P. IZARD:**

**THE ESTATE OF RICHMOND P. IZARD, CHERYL D.  
WATTS-IZARD AS PERSONAL REPRESENTATIVE,**

**PETITIONER-RESPONDENT,**

**V.**

**RICHMOND P. IZARD, II,**

**APPELLANT.**

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APPEAL from an order of the circuit court for Milwaukee County:  
THOMAS R. COOPER, Judge. *Affirmed in part; reversed in part and cause  
remanded with directions.*

Before Wedemeyer, P.J., Schudson and Curley, JJ.

¶1 PER CURIAM. Richmond P. IZARD, II (Richmond II) appeals from an order of the circuit court which, among other matters, dismissed his motion to bar the assignment of a homestead to the surviving spouse and ordered closing the

estate of Richmond P. Izard (Richmond I). Richmond II claims the trial court erred when it: (1) denied his claim alleging misrepresentation; (2) determined that the estate of Richmond I was insolvent; and (3) concluded that there were no violations of statutory procedure. Because the record does not support a claim for misrepresentation, and because the trial court's finding that the estate of Richmond I was insolvent is not clearly erroneous, we affirm the order in part; however, because we cannot ascertain whether conformity to procedural requirements was considered and what effect such actions or lack thereof may have had in probating the estate, we remand with directions.

### BACKGROUND

¶2 Richmond I died intestate on February 15, 2000. He was survived by three sons: Kevin, Tito and Richmond II, and by his second wife, Cheryl D. Watts-Izard. On September 6, 2000, Cheryl, by her attorney, Irvin B. Charne, filed an application for informal administration of the estate, pursuant to WIS. STAT. ch. 865 (1999-2000). The three sons signed waiver forms consenting to the probate of decedent's estate and to the appointment of Cheryl as the personal representative of the estate. Domiciliary letters were issued to Cheryl on September 13, 2000. On October 31, 2000, she filed an inventory showing that the estate consisted of gross assets of \$122,636, and mortgages and liens against the property of the estate of \$106,446, leaving a net value subject to administration of \$16,190.

¶3 On November 12, 2001, Cheryl filed a personal representative's statement to close the estate and an estate receipt with the office of probate registry. In the former, she included an entry that she had received the entire residue of the estate; in the latter, under item 5 requiring, "Listed below, unpaid

claims, expenses or taxes and detailed arrangements which have been made to accommodate them: (If none, so state),” she stated: “None except for unpaid claim of Cheryl D. Watts-Izard for reimbursement of expenses and payment of Estate debt.”

¶4 On November 15, 2001, after counsel for the estate notified the surviving sons of the intention to close the estate, Richmond II filed an objection to closure, claiming he needed adequate time to review the case file and details to support the account numbers in the inventory, further claiming that he had received no correspondence from the estate prior to the notice to close. On November 28, 2001, he filed a demand for formal proceedings pursuant to WIS. STAT. §§ 865.03 and 865.05 (2001-02).

¶5 In this demand, he requested formal proceedings as to the following nine issues: (1) improper accounting procedures/documentation; (2) heirs received no copy of inventory; (3) inventory has not been itemized; (4) personal representative did not itemize or file a list of reimbursable items; (5) heirs have not been given time to review the final account supporting schedules prior to closing the case; (6) false statements in personal representative’s statement to close the estate; (7) interested parties did not receive a copy of the personal representative’s statement to close the estate; (8) no inventory filed (detail); and (9) undocumented claim for disbursements of Cheryl D. Watts-Izard.

¶6 On the same date, Richmond II also filed an objection on the following basis: “that the interested parties demand adequate time to review the case file and that supporting details be included to support accounting numbers. (ie household inventory, home value, etc.) Heirs have received no correspondence prior to action to close estate.”

¶7 On January 31, 2002, Cheryl, as personal representative, filed her final account, listing in detail the net value of the homestead and the debts of the decedent, i.e., medical expenses, a home improvement loan, and credit card expenses.

¶8 On April 24, 2002, Richmond II filed a second demand for formal administration including within it a petition for removal of Cheryl as the personal representative for consistently ignoring all written inquiries of interested parties regarding information guaranteed by the Wisconsin statutes. A hearing on the motion was conducted on May 22, 2002. After hearing arguments made by Richmond II, the court ruled that no grounds had been stated under WIS. STAT. § 857.09 (2001-02) to warrant removal.

¶9 A pretrial conference on the earlier filed demand for formal administration was held on January 31, at which time a contested hearing date was set for June 13. At the June 13 hearing, Richmond II did not call any witnesses. The evidence consisted of his own testimony and the testimony of the personal representative, Cheryl. After hearing the testimony and reviewing the relevant documents the court ruled:

The long and short of it, there probably is more value to the estate than the inventory indicates, but it isn't going to come anywhere near \$13,190. So I am satisfied that the inventory and the assets, and the values and liabilities established in the inventory are reasonable and accurate in the sense that it ultimately doesn't change -- the ultimate point is that this is still going to be an estate that has more liabilities than assets and remains an insolvent estate.

¶10 Subsequently, Richmond II filed an objection to bar the assignment to Cheryl of the home owned by the deceased at the time of his death. After a hearing on August 29, 2002, the court entered an order dismissing Richmond II's

objection to the assignment, and affirmed its earlier finding that the estate was insolvent. The order of the court directed that the estate be closed. Richmond II now appeals.

## DISCUSSION

¶11 Richmond II's notice of appeal recites that he appeals "from the whole final order ... wherein the court ordered that the objection of Richmond P. Izard II, to the transfer of the home to Cheryl Watts-Izard is dismissed and further ordered that the estate is closed ...." In addition, he challenges the following determinations: (1) this was an insolvent estate; (2) the transfer of the homestead to the personal representative was reimbursement for money she had already paid; (3) the issue raised by Richmond P. Izard, II is moot because the court had already made a finding that there were no assets in the estate; and (4) the estate is to be closed and the procedure the estate followed was proper.

¶12 Richmond II's brief is *pro se*. It does not track the notice of appeal with any precision. In considering the contents of his brief, we shall endeavor to bring some clarity to his claims of trial court error.

¶13 We conclude that Richmond II sets forth three bases for claiming trial court error: (1) procedural compliance with statutory law; (2) asset valuation; and (3) misrepresentation. To facilitate our analysis, we address these issues in reverse order.

### A. MISREPRESENTATION

¶14 The requirements for pleading and proving a claim for misrepresentation place a heavy burden upon anyone asserting such a claim. "The party alleging [intentional misrepresentation] has the burden of proving the

elements by clear and convincing evidence.” *Lundin v. Shimanski*, 124 Wis. 2d 175, 184, 368 N.W.2d 676 (1985). There are three elements necessary to set forth a claim for intentional misrepresentation: (1) the statement of fact must be false; (2) the statement must have been made with the intent to defraud and for the purpose of inducing the other party to act; and (3) the other party did in fact rely on the false statement to his or her detriment. *First Credit Corp. v. Myricks*, 41 Wis. 2d 146, 149, 163 N.W.2d 1 (1968) (citations omitted).

¶15 Negligent misrepresentation requires four elements: (1) the defendant made a representation of fact; (2) the representation of fact was untrue; (3) the defendant was negligent in making the misrepresentation; and (4) the plaintiff believed the representation to be true and relied on it to his or her detriment. *See Consolidated Papers, Inc. v. Dorr-Oliver, Inc.*, 153 Wis. 2d 589, 593 n.2, 451 N.W.2d 456 (Ct. App. 1989). From our review of the pleadings and the record, we cannot locate any showing that would lend support for either claim. Thus, these claims fail.

## B. ASSET AND LIABILITY VALUATION AND INSOLVENCY

¶16 One of the bases for Richmond II’s objection to the personal representative’s request to close the estate is his assertion that the estate was not insolvent. This issue was the subject of a contested hearing on June 13, 2002. Resolution of this issue involved ascertaining the probate assets, the valuation of those assets, and the amount of the allowed liabilities to arrive at a total net value for distribution. This process was an exercise in fact finding. *See Noll v. Dimiceli’s, Inc.*, 115 Wis. 2d 641, 643, 340 N.W.2d 575 (Ct. App. 1983) (findings of fact will not be overturned unless they are clearly erroneous). As noted earlier

in this opinion, the only witnesses who testified were Cheryl, as the personal representative, and Richmond II.

¶17 The trial court's oral decision consisted of nine transcript pages of analysis. Based on the evidence presented, the trial court found that the life insurance, which named Cheryl as beneficiary, was not a probate asset. It found that the value of the homestead based on the recent assessment by the City of Milwaukee was reasonable, particularly because Richmond II failed to present any relevant comparable sales establishing a higher fair market value or other admissible evidence contesting the city's valuation. It ruled that Richmond II had not met his burden of challenging the value of the household goods and, thus, their valuation under the circumstances was accurate. In the absence of proof to the contrary, the trial court approved the amounts presented for the funeral, credit card expenses, and the home improvement loan.

¶18 With regard to a direct deposit employment severance payment of \$15,000 received after the death of the deceased, the trial court ruled the deposit was to the estate, which was then disbursed from the estate assets to the three surviving sons of the deceased. Each of the sons received \$5000. The court stated that to determine otherwise would have required each of the sons to refund a portion of what they received. After making its findings of facts, the trial court concluded that although some of the values stated in the inventory and final account might have been higher, any provable increase would not eliminate the deficit. The trial court found that the inventory valuation was reasonable, and the estate was insolvent by the sum of \$13,190. From our review of the record, these findings of fact are not clearly erroneous and therefore may not be overturned. There is evidence in the record to support the findings.

### C. COMPLIANCE WITH STATUTORY LAW

¶19 On two separate occasions, Richmond II filed demands for formal administration. In these filings, he set forth the bases for his demands. WISCONSIN STAT. § 865.03(2), in relevant part, reads: “Service of a demand on the personal representative ... shall suspend informal administration as to the issues or matters referred to therein and shall suspend the powers of the personal representative in respect thereto until the same are reinstated by the court.”

¶20 Richmond II relied upon this statutory provision in the contested hearing and continues to do so in his briefs on appeal. From our review of the record, we are unable to ascertain how this issue was examined at the trial court level, and whether it had any effect upon the personal representative’s execution of her powers while the demands for formal administration were pending. For this reason, we remand this case to the same trial judge to consider any implications that the calls of the statute may have on the distribution of assets in this estate. We shall retain jurisdiction over this appeal and respectfully request a response by the trial court within ninety days. The trial court, in its discretion, may request input from the parties if necessary to address resolution of this issue.<sup>1</sup>

*By the Court.*—Order affirmed in part; reversed in part and cause remanded with directions.

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<sup>1</sup> In his reply brief, Richmond II, for the first time, raises the issue of compliance with the claims provisions of WIS. STAT. ch. 859 (2001-02). This area of inquiry was not addressed in his main appellate brief; therefore, it is deemed waived. *In re Estate of Bilsie*, 100 Wis. 2d 342, 346 n.2, 302 N.W.2d 508 (Ct. App. 1981). Izard also asserts “misrepresentation/conflict of interest” arguing that the trial court should have granted his motion for a mistrial on the basis that Cheryl had a conflict of interest in acting as personal representative. This argument, however, is inadequately developed and we decline to address it. *In re Estate of Balkus*, 128 Wis. 2d 246, 255 n.5, 381 N.W.2d 593 (Ct. App. 1985).



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

