SUPREME COURT OF IOWA

# Peggy Haney and Michelle Jared, Personal Representatives of the Estate of Sylvia Kitchen, Deceased v. Eallen Kitchen

690 N.W.2d 675 (Iowa 2005) · No. No. 03-1522 · Decided January 7, 2005

## SUMMARY

The Iowa Supreme Court held that a former executor did not breach his fiduciary duty by failing to file an amended inheritance tax return seeking a refund after a will contest. The court concluded that beneficiaries who had the right to file the amended return could protect the estate's interests themselves, and the executor was not required to certify and defend a return inconsistent with the testamentary position he was pursuing on appeal. The court affirmed the district court's dismissal of the estate's inheritance-tax claim.

## CASE DETAILS

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| COURT | Supreme Court of Iowa |
| WRITING FOR THE COURT | Wiggins, Justice |
| JURISDICTION | Iowa |
| DECIDED | January 7, 2005 |
| DOCKET | No. 03-1522 |
| DISPOSITION | affirmed |
| PROCEDURAL POSTURE | The estate brought an equity action against a previous executor under Iowa Code section 633.160, alleging that he breached his fiduciary duty by failing to file an amended inheritance tax return seeking a refund. The district court dismissed the inheritance-tax claim, and the estate appealed. |
| STANDARD OF REVIEW | De novo review because the district court tried the matter in equity. |
| PRECEDENTIAL VALUE | Published Iowa Supreme Court opinion; precedential. |
| PARTIES | Peggy Haney and Michelle Jared, Personal Representatives of the Estate of Sylvia Kitchen, Deceased v. Eallen Kitchen |

## TOPICS

estate administration · probate procedure · tax statute of limitations · tax refunds · appellate procedure

## PRACTICE AREAS

probate · estate administration · inheritance tax · fiduciary liability · appellate procedure

## QUESTIONS PRESENTED

1. Whether an executor breached Iowa Code section 633.160 by failing to file an amended inheritance tax return and claim a refund for an alleged overpayment.
2. Whether the executor had a duty to file or defend an amended inheritance tax return that was inconsistent with the testamentary scheme then in effect and with the executor's position in the pending will-contest litigation.

## HOLDINGS

1. Under the facts and circumstances of this case, Eallen did not breach his fiduciary duty by failing to file an amended inheritance tax return or claim a refund.
2. The 1994 will remained the testamentary scheme governing the estate until procedendo issued after the judgment setting it aside became final; the executor therefore was not required to file a return inconsistent with that scheme and his litigation position.

## KEY QUOTATIONS

> *"As long as the Objectors had a right to file an amended return on the form prescribed by the director of revenue and could do so in good faith, Eallen did not have a duty to file, certify under penalty of perjury, and defend an amended return reflecting a tax liability inconsistent with the position he was taking in the litigation."* (690 N.W.2d at 679)

## FACTUAL BACKGROUND

Sylvia Kitchen's 1994 will left most of her estate to Eallen Kitchen and Janice Sanders and named Eallen as executor. The beneficiaries under a prior will challenged the 1994 will, and a jury found it resulted from undue influence; the judgment setting aside the will was affirmed after the relevant refund period had expired. Eallen had filed and paid the inheritance tax based on the 1994 will, while the objectors repeatedly sought his removal and asked him to file an amended return seeking a refund. After Eallen resigned, successor representatives filed the amended return, but the Department of Revenue rejected it as untimely.

## PROCEDURAL HISTORY

After Sylvia Kitchen's 1994 will was admitted to probate, objectors successfully challenged it as the product of undue influence. The judgment was appealed and remained stayed by a supersedeas bond until the appeal concluded. The successor personal representatives later filed an amended inheritance tax return, but the Department of Revenue rejected the refund request as untimely. The district court concluded that Eallen Kitchen had no duty to file either an amended return or a protective refund claim, and the Supreme Court of Iowa affirmed.

## DISPOSITION

affirmed

CASES CITED

- In re Estate of Bliven, 236 N.W.2d 366, 369 (Iowa 1975)
- In re Millard's Estate, 251 Iowa 1282, 1291, 105 N.W.2d 95, 101 (1960)