SUPREME COURT OF NEBRASKA

In re Estate of Mamie G. Reed

672 N.W.2d 416, 267 Neb. 121 (2003) · No. S-01-1195 · Decided December 19, 2003

SUMMARY

The Nebraska Supreme Court held that county courts have authority, under the Supreme Court's inherent administrative authority and case-progression directive, to assess probate administration costs against an attorney representing a personal representative. However, the county court acted arbitrarily and denied due process by imposing joint and several liability on the attorney without an evidentiary hearing or a finding that he was personally responsible for the estate's delay. The court affirmed in part and reversed in part the Nebraska Court of Appeals' decision.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Wright, J.; Hendry, C.J.; Connolly, J.; Gerrard, J.; Stephan, J.; Miller-Lerman, J.
JURISDICTION	Nebraska
DECIDED	December 19, 2003
DOCKET	S-01-1195
DISPOSITION	other
PROCEDURAL POSTURE	Lynch petitioned the Nebraska Supreme Court for further review after the Court of Appeals reversed the county court's assessment of estate-administration costs against Rowland, the former personal representative's attorney.
STANDARD OF REVIEW	In probate matters, absent an equity question, the appellate court reviews for error appearing on the record made in the county court. Questions of law are reviewed independently.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Richard A. Rowland v. John E. Lynch, successor personal representative

TOPICS

probate procedure · estate administration · appellate procedure · procedural due process · standard of review

PRACTICE AREAS

probate · appellate procedure · constitutional law · civil procedure

QUESTIONS PRESENTED

1. Whether a county court has authority, pursuant to the Nebraska Supreme Court's probate case-progression directive and its inherent supervisory authority, to assess administration costs against an attorney representing a personal representative.
2. Whether the county court properly exercised that authority by imposing costs on Rowland without an evidentiary hearing, findings regarding his personal responsibility for delay, or an opportunity to be heard.
3. Whether imposing costs against Rowland without a meaningful opportunity to be heard violated procedural due process.

HOLDINGS

1. A county court has authority to assess estate-administration costs against an attorney representing a personal representative because the Nebraska Supreme Court possesses inherent and constitutional administrative authority to establish case-progression standards for inferior courts and to enforce those directives.
2. Before taxing costs against an attorney for a personal representative, the county court must determine from the evidence whether there was a reason for delay and whether the attorney was personally responsible for that delay; the court must provide an evidentiary hearing and a meaningful opportunity to be heard.

KEY QUOTATIONS

> *"Today we hold that a court cannot, in enforcing directives of a superior court, deprive a party of legal or substantive rights by acting in an arbitrary or unreasonable manner which is inconsistent with or contravenes principles of general law or constitutional or statutory provisions."* (at 424)

> *"Before a court may tax costs against the attorney for a personal representative, the court must first determine upon the evidence presented whether any reasons exist for a delay in promptly administering the estate and whether the attorney is personally responsible for such delay in the administration of the estate."* (at 425)

> *"Thus, we find that Rowland was denied due process."* (at 425)

FACTUAL BACKGROUND

Cook served as personal representative of Mamie G. Reed's estate, whose principal asset was a modestly valued house that remained unsold and was subject to foreclosure and substantial liens. After the estate remained open, the county court removed Cook, appointed Lynch as successor personal representative, and taxed completion costs jointly and severally against Cook and Rowland, Cook's attorney. The county court later ordered Cook and

Rowland liable for $16,300.59 without conducting a hearing determining whether Rowland was personally responsible for the delay or had authority to act without Cook's approval.

PROCEDURAL HISTORY

The county court removed Velma M. Cook as personal representative, appointed Lynch as successor personal representative, and ordered Cook and Rowland jointly and severally liable for more than $16,300 in fees and costs. The Court of Appeals reversed insofar as the county court assessed costs against Rowland and remanded with directions to remove Rowland from the judgment. The Nebraska Supreme Court granted Lynch's petition for further review, reversed the Court of Appeals' conclusion that the county court lacked authority to assess costs against a personal representative's attorney, but affirmed the result removing Rowland from the judgment because the county court imposed liability without an evidentiary hearing or finding that Rowland caused the delay.

DISPOSITION

other

REMAND INSTRUCTIONS

The Supreme Court affirmed the Court of Appeals' direction to remove Rowland from the county court's judgment. The court did not impose additional remand instructions beyond that disposition.

CASES CITED

- In re Estate of Reed, 11 Neb. App. 915, 663 N.W.2d 147 (2003)
- In re Trust Created by Martin, 266 Neb. 353, 664 N.W.2d 923 (2003)
- State v. Joubert, 246 Neb. 287, 518 N.W.2d 887 (1994)
- In re Integration of Nebraska State Bar Ass'n, 133 Neb. 283, 275 N.W. 265 (1937)
- State v. Davidson, 260 Neb. 417, 618 N.W.2d 418 (2000)
- In re Complaint Against Jones, 255 Neb. 1, 581 N.W.2d 876 (1998)
- Noffsinger v. Nebraska State Bar Ass'n, 261 Neb. 184, 622 N.W.2d 620 (2001)
- Goldfarb v. Virginia State Bar, 421 U.S. 773, 95 S. Ct. 2004, 44 L. Ed. 2d 572 (1975)
- Beaman v. Cook Family Foods, 244 Neb. 431, 507 N.W.2d 462 (1993)
- Hass v. Neth, 265 Neb. 321, 657 N.W.2d 11 (2003)
- Newman v. Rehr, 263 Neb. 111, 638 N.W.2d 863 (2002)
- In re Estate of Reed, 10 Neb. App. xxii (No. A-00-1177, May 22, 2001)