SUPREME COURT OF NEBRASKA

In re Estate of Charles E. Lakin

In re Estate of Lakin, 310 Neb. 271 (2021) · No. Nos. S-20-093, S-20-094 · Decided October 8, 2021

SUMMARY

The Nebraska Supreme Court reviewed consolidated appeals concerning the payment of approximately $7 million under a promissory note to a copersonal representative and cotrustee after the decedent's death. The court held that the debt was not authorized for payment because the claimant failed to file a claim against the estate, and that genuine issues of material fact remained regarding fiduciary-duty claims. The court reversed the summary judgment and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Funke, J.; Heavican, C.J.; Cassel, J.; Stacy, J.; Freudenberg, J.
JURISDICTION	Nebraska
DECIDED	October 8, 2021
DOCKET	Nos. S-20-093, S-20-094
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Charles E. Lakin Foundation appealed consolidated county-court orders granting summary judgment to Thomas Pribil and William Kilzer individually and in their capacities as copersonal representatives of the estate and cotrustees of the revocable trust. The Nebraska Supreme Court moved the appeals to its docket and reviewed the cross-motions for summary judgment.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. The appellate court determines whether the pleadings and admitted evidence show no genuine issue of material fact or ultimate inference and whether the moving party is entitled to judgment as a matter of law, viewing the evidence and reasonable inferences in favor of the party against whom judgment was entered.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential
PARTIES	Charles E. Lakin Foundation, Inc. v. Thomas Pribil, William Kilzer, Thomas Pribil and William Kilzer, as copersonal representatives of the

Estate of Charles E. Lakin, Thomas Pribil and William Kilzer, as cotrustees of the Charles E. Lakin Revocable Trust

TOPICS

probate procedure | creditor claims | summary judgment | appellate jurisdiction | estate litigation

PRACTICE AREAS

probate | estate administration | trust administration | civil procedure | contracts

QUESTIONS PRESENTED

1. Whether the county court's order was a final, appealable order and whether the trust-case notice of appeal was jurisdictionally defective because it misidentified the appealing party.
2. Whether the 1984 document was substantively a promissory note or a deferred-compensation agreement.
3. Whether the applicable statute of limitations barred payment under the agreement.
4. Whether Pribil was required to file or present a claim against Lakin's estate before receiving payment.
5. Whether genuine issues of material fact precluded summary judgment on the Foundation's breach-of-fiduciary-duty claims.
6. Whether the record established a breach of the rule requiring court permission before a personal representative pays himself more than $250.
7. Whether Pribil made a judicial admission that he was not a creditor of the estate.

HOLDINGS

1. The county court's order operated as a final, appealable order because it effectively denied the Foundation's petitions for removal and surcharge and affected a substantial right in a probate special proceeding.
2. The trust-case notice of appeal was sufficient despite incorrectly identifying the trust as the appealing party because it was timely, filed under the correct docket, identified the order appealed from, and was signed by the Foundation's counsel.
3. The agreement, although styled a promissory note, was substantively a deferred-compensation agreement.
4. The applicable statute of limitations did not bar payment under the deferred-compensation agreement because the limitations period began when Pribil's employment ended at Lakin's death in March 2016.
5. Pribil was required to file or otherwise properly present a claim against Lakin's estate because the debt was for deferred wages earned during Lakin's lifetime, not postdeath wages or an administrative expense. Because Pribil did not file or present the claim, the debt was barred against the estate, the personal representatives, and Lakin's heirs and devisees, and the payment was unauthorized.
6. Summary judgment for Pribil and Kilzer on the Foundation's fiduciary-duty claims was improper because genuine issues of material fact remained concerning whether their payment of the barred claim

breached duties owed as personal representatives and trustees.

7. Pribil did not make a binding judicial admission that he was not a creditor because his statement in the informal probate application was not deliberate, clear, and unequivocal in context.

KEY QUOTATIONS

> *"All claims against a decedent's estate which arose before the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:"* (293-294)

> *"The fact that both parties simultaneously are arguing that there is no genuine dispute of fact does not establish that a trial is unnecessary."* (299)

> *"Summary judgment should not have been granted."* (300)

FACTUAL BACKGROUND

Charles E. Lakin employed Thomas Pribil for many years and in 1984 executed a document styled a promissory note promising Pribil additional compensation for past and continued employment. After Lakin died in 2016, Pribil and William Kilzer, serving as copersonal representatives and cotrustees, paid Pribil approximately $6.95 million under the agreement and liquidated trust assets to fund the payment, although Pribil had not filed a probate claim. The Charles E. Lakin Foundation, the primary trust beneficiary, alleged that the payment breached the fiduciary duties owed by the representatives and trustees.

PROCEDURAL HISTORY

After Charles E. Lakin's death, Pribil and Kilzer administered his estate and trust and paid Pribil approximately $6.95 million under a deferred-compensation agreement without a formal probate claim or court approval. The Foundation petitioned for suspension, removal, surcharge, successor fiduciaries, and related relief, and the parties filed competing summary-judgment motions. The Douglas County Court granted summary judgment for Pribil and Kilzer, denied the Foundation's motions, and the Foundation appealed.

DISPOSITION

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reversed_and_remanded
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REMAND INSTRUCTIONS

The county court must conduct further proceedings consistent with the opinion, including resolving the Foundation's fiduciary-duty claims and the disputed issue concerning whether Pribil violated the requirement to obtain court permission before paying himself more than $250. The court must determine the source of the payment, who made it, and in what capacity.

CASES CITED

- Sundermann v. Hy-Vee, 306 Neb. 749, 947 N.W.2d 492 (2020)
- Johnson v. Nelson, 290 Neb. 703, 861 N.W.2d 705 (2015)
- Chicago Lumber Co. of Omaha v. Selvera, 282 Neb. 12, 809 N.W.2d 469 (2011)
- In re Estate of McKillip, 284 Neb. 367, 820 N.W.2d 868 (2012)
- State v. Riensche, 283 Neb. 820, 812 N.W.2d 293 (2012)
- In re Estate of Hedke, 278 Neb. 727, 775 N.W.2d 13 (2009)
- In re Estate of Seidler, 241 Neb. 402, 490 N.W.2d 453 (1992)
- In re Estate of Muncillo, 280 Neb. 669, 789 N.W.2d 37 (2010)
- Gillpatrick v. Sabatka-Rine, 297 Neb. 880, 902 N.W.2d 115 (2017)
- Hearst-Argyle Prop. v. Entrex Comm. Servs., 279 Neb. 468, 778 N.W.2d 465 (2010)
- Marcovitz v. Rogers, 276 Neb. 199, 752 N.W.2d 605 (2008)
- Dooling v. Dooling, 303 Neb. 494, 930 N.W.2d 481 (2019)
- Livingston v. Metropolitan Util. Dist., 269 Neb. 301, 692 N.W.2d 475 (2005)
- Weiss v. Weiss, 179 Neb. 714, 140 N.W.2d 15 (1966)
- J.R. Simplot Co. v. Jelinek, 275 Neb. 548, 748 N.W.2d 17 (2008)
- In re Estate of Feuerhelm, 215 Neb. 872, 341 N.W.2d 342 (1983)
- In re Estate of Golden, 120 Neb. 226, 231 N.W. 833 (1930)
- Estate of Fitzgerald v. First Nat. Bank of Chariton, 64 Neb. 260, 89 N.W. 813 (1902)
- Community First State Bank v. Olsen, 255 Neb. 617, 587 N.W.2d 364 (1998)
- In re William R. Zutavern Revocable Trust, 309 Neb. 542, 961 N.W.2d 807 (2021)
- In re Estate of Forgey, 298 Neb. 865, 906 N.W.2d 618 (2017)
- Trieweiler v. Sears, 268 Neb. 952, 689 N.W.2d 807 (2004)
- Rains v. Cascade Industries, Inc., 402 F.2d 241 (3d Cir. 1968)
- Fitzgerald v. Community Redevelopment Corp., 283 Neb. 428, 811 N.W.2d 178 (2012)
- State v. Hernandez, 309 Neb. 299, 959 N.W.2d 769 (2021)