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ATTORNEY FOR APPELLANT:

DOUGLAS M. GRIMES
Gary, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

RUBY HAMILTON,)
)
Appellant-Defendant,)
)
vs.) No. 45A03-1009-SC-503
)
EDDIE WOODS, HELEN BILLINGSLEY,)
and KATHLEEN HENDERSON,)
)
Appellees-Plaintiffs.)

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable R. Jeffrey Boling, Commissioner
Cause No. 45D09-1007-SC-2470
45D09-1007-SC-2471
45D09-1007-SC-2472

March 23, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Chief Judge

Case Summary and Issue

Ruby Hamilton appeals the small claims court's judgments in favor of Eddie Woods, Helen Billingsley, and Kathleen Henderson (collectively, the "Claimants"), as to their claims for reimbursement of their mother, Mildred Woods's, funeral expenses. On appeal, Hamilton raises three issues which we consolidate and restate as whether the small claims court's judgments are clearly erroneous. We conclude the small claims court's judgments are not sustainable on a theory of contract or contribution and that the small claims court clearly erred when it resolved the Claimants' claims based on language in Mildred's will and Hamilton's status as estate representative and did so outside of the estate proceedings. Accordingly, we reverse.

Facts and Procedural History

The Claimants and Hamilton are siblings, four of the seven surviving children of Mildred Woods, who died on January 30, 2010 and whose death was preceded by her husband's. Mildred's funeral expenses were \$9,351.44. The Claimants were billed for that amount and each paid a one-seventh share, approximately \$1,335.92. Thereafter at least two of the Claimants sent letters to Hamilton, each requesting reimbursement of \$1,335.92 in "out of pocket expense." Appendix of Appellant at 8, 11. Each letter alleged Hamilton's name "is the only name listed on Mildred Woods [sic] bank and credit union accounts," that Hamilton was "granted the authority to transact business on Mildred Woods [sic] behalf," and that Hamilton was "listed as the executive [sic] on Mildred Woods [sic] will." *Id.* at 8, 11.

On July 28, 2010, the Claimants filed, in three separate small claims cases, their notices of claim against Hamilton individually. Each notice of claim sought reimbursement of \$1,335.92 for contributions toward Mildred's funeral expenses.

The small claims court held a consolidated bench trial at which the Claimants and Hamilton appeared pro se. The testimony showed Mildred left a will which named Hamilton the "executive" of her estate, transcript at 10, and that the estate had not yet been closed, id. at 29. The testimony also showed Mildred transferred a substantial portion of her assets to a joint bank account which, following her husband's death, had Hamilton as the only other name on it. Hamilton testified that the account had approximately \$50,000, but Hamilton gave \$7,000 to her younger brother, leaving \$43,000 in the account at the time of Mildred's death. Hamilton's testimony also implied that after Mildred's death, she closed that account and transferred the \$43,000 to her own separate bank account. See id. at 30-31.

With respect to Mildred's funeral arrangements, Henderson testified both that "all of us were supposed to pay . . . \$1,332" and that "[Hamilton] was supposed to pay the whole thing . . . out of [Mildred]'s money" but only paid "a portion of it." Id. at 16-17. Eddie Woods testified that he was seeking reimbursement because "[t]he estate says [Mildred's] burial and everything was supposed to be taken out of" the "money [that] was part of my mother's estate." Id. at 22.

The small claims court asked for and received from Henderson a copy of Mildred's will, id. at 12, and explained: "It looks like according to the will . . . [Mildred's] money is supposed to be used to pay for the burial expenses So, she did intend for her money to

take care of her burial expenses.” Id. at 23. At the conclusion of the hearing, immediately after Hamilton’s admission that \$43,000 originally from Mildred’s assets was now in Hamilton’s account, the small claims court stated Hamilton “owe[s] [the Claimants] each for their portion of the funeral. Judgement [sic] will be entered in that amount plus court costs.” Id. at 31. Thus, the small claims court entered judgment against Hamilton and in favor of Eddie Woods for \$1,335.00, plus costs;¹ against Hamilton and in favor of Billingsley for \$1,335.92, plus costs; and against Hamilton and in favor of Henderson for \$1,335.92, plus costs.

Hamilton filed a notice of appeal and a motion to consolidate the three cases, which this court granted. Hamilton also filed with the trial court, and was granted, a motion to set bond and stay proceedings supplemental pending appeal.

Discussion and Decision

Small claims judgments are “subject to review as prescribed by relevant Indiana rules and statutes.” Ind. Small Claims Rule 11(A). Following a bench trial, this court on appeal “shall not set aside the . . . judgment unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.” Ind. Trial Rule 52(A). We do not judge the credibility of the witnesses or reweigh evidence, and we will affirm a general judgment if it is sustainable on any legal theory consistent with the evidence. Perdue Farms, Inc. v. Pryor, 683 N.E.2d 239, 240 (Ind. 1997). Conversely, a judgment is clearly erroneous if review of the record leaves us with a firm conviction that a mistake has

¹ The record contains no explanation for awarding Eddie Woods \$1,335.00 rather than \$1,335.92.

been made. Wenzel v. Hopper & Galliher, P.C., 779 N.E.2d 30, 36 (Ind. Ct. App. 2002), trans. denied.²

Our review of the record shows the small claims court treated the Claimants' claims against Hamilton as an estate matter and resolved them based on the language of Mildred's will and Hamilton's status as estate representative. Specifically, the small claims court found Mildred's will contemplated that all of her funeral expenses would be paid out of her estate. The small claims court also based its judgment against Hamilton in part on her appropriation of estate assets, finding Hamilton was thereby liable to repay the Claimants "each for their portion of the funeral." Tr. at 31.

We conclude the small claims court erred as a matter of law when it resolved the Claimants' claims on this basis. The Claimants sued Hamilton individually, not in her capacity as estate representative, so liability flowing from the estate plan or from Hamilton's appropriation of estate assets could not properly be established in this case. Moreover, a small claims action is not an appropriate vehicle for a court to resolve estate issues, particularly where, as here, it appears the estate remains open and other persons – Mildred's three other children who purportedly paid some of the funeral expense – may have related claims for reimbursement that have not been joined to this action. "Funeral expenses are unquestionably a claim against a decedent's estate." Richardson v. Richardson, 168 Ind. App. 658, 662, 345 N.E.2d 251, 253 (1976). Thus, while the Claimants may have valid

² We also note that none of the Claimants have filed an appellee's brief. Accordingly, we do not undertake the burden of developing an argument for the Claimants, but may reverse upon a showing of prima facie error. See Trinity Homes, LLC v. Fang, 848 N.E.2d 1065, 1068 (Ind. 2006).

claims for reimbursement of Mildred's funeral expenses from her estate, their only option to pursue those claims is in the estate proceedings, not this collateral action.

We can discern no other legal theory upon which the small claims court's judgments might be sustained. Because the small claims court required Hamilton to reimburse all three Claimants' shares of funeral expenses, the judgments are not sustainable based upon an express or implied contract for Hamilton to contribute her one-seventh share. Such a theory of contribution would support only one judgment for \$1,335.92, not the three separate judgments the small claims court entered for a total of \$4,006.84. Even if the evidence supported finding Hamilton liable for \$1,335.92, we could not affirm the small claims court's judgment as modified because we could not be confident such an affirmance was consistent with the small claims court's evaluation of the evidence and inferences drawn therefrom. Cf. Mitchell v. Mitchell, 695 N.E.2d 920, 923-24 (Ind. 1998) (holding appellate courts may affirm the trial court on any legal theory supported by its special findings, but should do so only if confident such an affirmance is consistent with all of the trial court's findings and inferences reasonably drawn therefrom).

Conclusion

The small claims court's judgments are not sustainable on a theory of contract or contribution, and the small claims court clearly erred when it treated and resolved the Claimants' claims as an estate matter and did so outside of the estate proceedings.

Accordingly, the small claims court's judgments are reversed.

Reversed.

RILEY, J., and BROWN, J., concur.