

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**December 9, 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**  
**STATE OF WISCONSIN**

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

**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.*

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

¶1 PER CURIAM. On August 19, 2003, by order of this court, we remanded this case to the same trial court “to consider any implications that the

calls of [WIS. STAT. § 865.03(2) (2001-02)]<sup>1</sup> may have on the distribution of assets in this estate.” We retained jurisdiction and requested a response by the trial court within ninety days. We have received the remittitur dated September 9, 2003, and now review its contents in the context of our earlier decision.

## I. BACKGROUND

¶2 A further review of the record, together with the trial court’s supplemental proceedings, reveals the following. On November 28, 2001, Richard P. Izard II, *pro se*, filed a Demand for Formal Proceedings (informal administration). Contained in the demand were allegations that: (1) improper accounting procedures were used; (2) the heirs were not given time to review the final account supporting schedules prior to the closing of the case; and (3) false statements were made by the personal representative in the statement to close the estate. On the same date, Izard filed an objection to the closing of the estate. To a large extent, the contents of the objection dovetail with the allegations contained in the Demand for Formal Proceedings. On January 31, 2002, a pretrial conference was conducted relating to this demand and the objection. A contested hearing date was set for June 13, 2002, on both requests. On April 24, 2002, Izard filed a second Demand for Formal Proceedings seeking the removal of the personal representative due to non-performance. Izard obtained a hearing date of May 22, 2002, for this Demand. Thus, there existed overlapping Demands for Formal Proceedings and respective hearing dates.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

¶3 At the May 22, 2002 hearing, Izard conceded that the purpose of the hearing was not to consider the objection to the closing of the estate nor any alleged accounting irregularities. Those were matters scheduled for examination on June 13, 2002. Rather, the purpose of the hearing was “really just about removing the personal representative.” In advancing his argument, Izard referred to WIS. STAT. § 857.09<sup>2</sup> as the basis for removal of the personal representative. In response, the trial court noted that the statute grants it discretionary power of removal. After reviewing the record, it stated, “I am satisfied but for the late -- the allegations of late filing, everything appears to be in order.” It then concluded, “I am not removing the personal representative. That issue [is] closed.... There’s no grounds for that.” The trial court decided that all remaining matters Izard

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<sup>2</sup> WISCONSIN STAT. § 857.09 provides:

**Procedure which may be followed when personal representative fails to perform.** If a personal representative fails to perform an act or file a document within the time required by statute or order of the court the court upon its own motion or upon the petition of any person interested may order the personal representative for the estate and his or her attorney to show cause why the act has not been performed or the document has not been filed and shall mail a copy of the order to the sureties on the bond of the personal representative. If cause is not shown the court shall determine who is at fault. If both are at fault, the court may dismiss both and then appoint a personal representative and appoint an attorney acceptable to the personal representative to complete the administration of the estate. If only the personal representative is at fault, he or she may be summarily dismissed and in that event the court shall then appoint another personal representative to complete the administration and close the estate. If only the attorney is at fault, the court may dismiss the attorney and instruct the personal representative to employ another attorney; if the personal representative fails to employ another attorney within 30 days, the court shall appoint an attorney. No other procedure for substitution of attorney is required in such cases. The procedure set forth in this section is not exclusive.

attempted to raise were more properly items for consideration at the June 13, 2002 hearing.

¶4 At the June 13 hearing, the trial court heard testimony from the personal representative and from Izard. The testimony covered the accuracy of the inventory accounts, the value of the homestead, the value of the household goods, the existence of two motor vehicles, the debts of the estate, post-death severance pay and the net financial condition of the estate. The court approved the accounts as reasonable and concluded that the estate was insolvent. It rejected the filed objection in its entirety and ordered the estate closed.

¶5 As indicated in our prior decision in this matter, on July 12, 2002, Izard filed a petition to bar assignment of the homestead to the surviving spouse. After a hearing on August 29, 2002, the trial court iterated its conclusion that the estate was insolvent, that the transfer of the homestead to the personal representative was for reimbursement for money that had been advanced for the payment of debts of the estate and, finally, that the procedural issues raised by Izard were moot.

## II. ANALYSIS

¶6 The operative language of the relevant statute, WIS. STAT. § 865.03(2), provides: “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.*” (Emphasis added.) It is uncontroverted that the trial court examined every issue raised by Izard in both the Demands for Formal Proceedings and the Objection to Closing the Estate. In

addition, Izard did not raise any objections during the course of the hearings that were not addressed and resolved.

¶7 When we remanded this case to the trial court, we asked the court to specifically consider the effect of WIS. STAT. § 865.03(2) on the execution of the powers possessed by the personal representative. We did this for the specific reason of insuring that no weakness in the chain of title to the homestead had been created. After a review of the record, the trial court resolved that

the personal representative acted with authority under law and should not have been suspended; should have been reinstated, and based upon the Court's finding that she acted properly in her duties, the issues as required by 865.03 (2) are moot, and, therefore, she has always had and will continue to have authority to perform her statutory duty. There is no credible evidence which would support an order of the court removing her or suspending her based upon her activities.

¶8 From this review, we conclude that the application of WIS. STAT. § 865.03(2), was carefully considered by the trial court and that the issues raised in the two demands were thoroughly examined to satisfy the calls of the statute. We thereby incorporate our per curiam decision of August 19, 2003, *Estate of Izard v. Izard*, No. 02-3107, unpublished slip op. (WI App Aug. 19, 2003), in the final disposition of this appeal affirming *in toto* the order of the circuit court for Milwaukee County.

*By the Court.*—Order affirmed.

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

