

STATE OF MICHIGAN
COURT OF APPEALS

In re ESTATE OF RACHEL E. SCHMIDT,
Deceased.

GWENDOLYN SANFORD,

Petitioner-Appellee,

UNPUBLISHED
February 25, 1997

v

DARRELL SCHMIDT,

Respondent-Appellant.

No. 187381
Kent Probate Court
LC No. 94-158763-SE

Before: Sawyer, P.J., and Neff and A.L. Garbrecht,* JJ.

PER CURIAM.

Respondent, the father of decedent, appeals as of right from the probate court's order which distributed the wrongful death proceeds from decedent's estate. The order awarded respondent nothing. We affirm.

Respondent contends that the probate court improperly excluded evidence concerning his relationship with his oldest daughter, decedent's older sister. This Court reviews the probate court's decision to exclude evidence for abuse of discretion. *McTaggart v Lindsey*, 202 Mich App 612, 617; 509 NW2d 612 (1993). The probate court ruled that the evidence was not relevant to the issue of respondent's relationship with decedent and, later in the proceeding, ruled that additional presentation of the evidence would be needlessly cumulative. The probate court's rulings were proper under MRE 402 and 403. There was no abuse of discretion.

Next, respondent challenges the probate court's distribution of the proceeds. This Court reviews the probate court's findings of fact under the clearly erroneous standard and reviews the court's distribution for an abuse of discretion. *Hoogewerf v Kovach*, 185 Mich App 577, 579; 463 NW2d 160 (1990). Although respondent contends that his hope for a relationship with decedent in the future

* Circuit judge, sitting on the Court of Appeals by assignment.

should have been considered, the proper measure is the time and activities respondent shared with decedent and the overall characteristics of his relationship with her. *McTaggart, supra*, p 616. This Court has reviewed the record and it supports the probate court's finding that respondent did not have any relationship with decedent and has not sustained any loss. The court did not abuse its discretion in awarding decedent nothing from the wrongful death proceeds.

Affirmed. Petitioner-appellee being the prevailing party, she may tax costs pursuant to MCR 7.219.

/s/ David H. Sawyer

/s/ Janet T. Neff

/s/ Allen L. Garbrecht