LEGAL UPDATE

Accountability to heirs; how does that work again?

Date: 14 February 2020

On 21 January 2020, the Court of Appeal of 's-Hertogenbosch considered the question of whether a testator's girlfriend was accountable to his heirs.

The situation was as follows. Ms A had a relationship with the testator. They did not live together and did not have a registered partnership. The testator was decisionally competent and adequately able to manage his own finances. By will, the testator appointed one of his children as executor. Ms A is not an heir to the testator. After the death, it emerged, among other things, that in the two years before the testator's death, up to €200,000 in cash was withdrawn from the testator's bank account. €100,000 was also apparently gifted to Ms A. The executor summoned Ms A and demanded principally that she account for the management carried out during the testator's life. On what basis? Unwritten law.

Based on established case law, an obligation to render account can arise from the law, the juridical act or unwritten law. In its ruling of 9 May 2014, the Supreme Court listed the basic principles on the basis of which 'unwritten law' can result in an obligation to render account to heirs. There could be an obligation based on unwritten law if there is a juridical relationship that shows connection with one or more cases provided for in the law in which such an obligation has been laid down (e.g. community, contract or agency). The circumstances of the case must also be considered. For example, the reason for the management, the relationship between the manager and the right holder, what was customary between them, and the extent to which the person who carried out the management could act independently are factors. What is also important is the extent to which the right holder was able to oversee the actions of the person administering the management and stand up for his interests.

The Court of Appeal of 's-Hertogenbosch ruled on the basis of the aforementioned principles that there was no obligation to render account. The mere fact that the testator and Ms A had a relationship was insufficient; after all, they did not run a common household. Moreover, there was no evidence that the testator had asked Ms A to help him with his administration or instructed her to manage his finances. Until his death he was evidently perfectly capable of doing this himself, and did in fact do so. The heirs could do nothing about the gift and the many cash withdrawals during the testator's life. These are deemed to have been done with the testator's consent.

Can heirs ever manage to successfully demand accountability? The Court of Appeal of Arnhem-Leeuwarden handed down a rather exceptional judgment on 23 July 2019. An heir who managed his parents' finances pursuant to a power of attorney was accountable to the other heirs. The Court of Appeal was of the opinion that the juridical relationship could be deemed a contract for services. This created a legal obligation to render account to the testator, which obligation passed to the heirs after death. This ruling provides possibilities for heirs who are confronted with questionable expenses and disproportionate cash withdrawals that are inconsistent with the testator's lifestyle. The fact remains, however, that if the testator was decisionally competent and was still (partly) in charge of managing

his finances, the carer who helped with the administration will not be readily found obliged to render account to the heirs.

VAN BENTHEM & KEULEN
ADVOCATEN | NOTARIAAT

This is a Legal Update from Froukje Dunki Jacobs.

For more information:

Froukje Dunki Jacobs
+31 30 25 95 522
froukjedunkijacobs@vbk.nl