In the Iowa Supreme Court

No. 24–1568

Submitted October 13, 2026—Filed November 20, 2026

In the matter of the **Estate of Lorraine Schultz**, deceased.

L. Annette Dearing, Jacquelyn D. Wilson, Jason Hager, and **Joshua Hager,**

Appellees,

vs.

Katrina Moreland, Keyli Keifer, and **Krista Nebendahl,**

Appellants.

On review from the Iowa Court of Appeals.

Interlocutory appeal from the Iowa District Court for Allamakee County, Richard D. Stochl, judge.

Objectors in a probate proceeding seek further review of a court of appeals decision that affirmed the denial of their motion to dismiss a will contest as late-filed under Iowa Code § 633.309. **Court of appeals decision vacated, district court ruling denying the motion to dismiss reversed, and case remanded for dismissal of the will contest.**

McDermott, J., delivered the opinion of the court, in which all justices joined.

Matthew J. Hemphill (argued) and Aiden R. Ruble of Bergkamp, Hemphill & McClure, P.C., Adel, for appellants.

Max E. Kirk (argued) and C. Danielle Crowe of Ball, Kirk & Holm, P.C., Waterloo; Molly M. Parker of Shuttleworth & Ingersoll, Cedar Rapids; Charles R.

Kelly of Charles Kelly Law Office, P.C., Postville; and C. Kevin McCrindle of Law Offices of C. Kevin McCrindle, Waterloo, for appellees.

McDermott, Justice.

Three beneficiaries of their grandmother's estate challenge the district court's ruling denying their motion to dismiss a will contest filed many years after the decedent's will had been admitted to probate. They argue that the ruling violates the probate code's plain text and runs counter to a lengthy line of caselaw that strictly bars untimely will contests. In this appeal, we must decide whether the contemporaneous filing of a family settlement agreement and the will tolled the limitations period for filing the will contest under Iowa Code § 633.309 (2024).

I.

Husband and wife Cloy and Lorraine Schultz together owned a collection of farm properties in northeast Iowa. In 1998, they executed mirror-image wills that gave the surviving spouse a life estate in the properties, with the remainder interest split equally among their four children: son Blaine and daughters Jacquelyn, Annette, and Deborah.

After Cloy died, Lorraine executed a new will in July 2003 that changed the proposed distribution of the farm properties. Under the new will, four farms totaling 420 acres would pass to Blaine; three farms totaling 151 shared acres would pass jointly to the three daughters; and one farm totaling 230 shared acres would pass jointly to all four children. The will directed equal shares of the remainder of Lorraine's estate to the four children. All told, under the will's proposed distribution, Blaine would receive over four times as many acres (477.5) as each of his sisters (107.83). The 2003 will listed Blaine and Annette as executors and Blaine and Deborah as Lorraine's attorneys-in-fact. Of Lorraine's children, only Blaine, who was present for the signing, initially knew about the 2003 will or its contents.

Sometime around 2014, the daughters learned of the 2003 will and confronted Blaine. Shortly after, the daughters and Blaine together consulted an attorney about restoring Lorraine's prior will from 1998. When the attorney consulted with Lorraine, however, he found her lacking testamentary capacity. With Lorraine unable to alter the 2003 will, the attorney suggested that the four children enter into a family settlement agreement. The children agreed and, in July 2014, each signed a family settlement agreement dividing the farm properties to be inherited from Lorraine equally among them.

Over the next few years, both Deborah and Blaine passed away, predeceasing their mother. Deborah died in 2015, survived by two children; Blaine died in 2017, survived by a spouse and three children.

Lorraine died on January 11, 2019. Later that month, on January 29, Annette, as executor, petitioned the district court to open probate. She filed both the 2003 will and the family settlement agreement with the district court. The court entered an order opening probate and appointing Annette as executor. On February 11, Annette mailed copies of the will and family settlement agreement, along with a notice of probate of will, of appointment of executor, and notice to creditors to all beneficiaries. Annette also published notice of probate in a local newspaper, with the second publication on February 13. A little over two years later, on April 14, 2021, Annette filed an amended final report seeking to distribute the property in Lorraine's estate as set forth in the family settlement agreement.

On May 5, Blaine's three children filed an objection to the final report. The objection asserted that the family settlement agreement was invalid and, as a result, distribution of Lorraine's estate must proceed under the 2003 will. The district court rejected their argument and ruled that the family settlement

agreement overrode the terms of the 2003 will. On appeal, the court of appeals reversed, holding that the family settlement agreement was unenforceable because it was signed before any rights under Lorraine's will had vested, and because Deborah's and Blaine's children never agreed to it. The court of appeals remanded the case for further proceedings on the 2003 will, as "the district court did not expressly rule on the will's validity or any issues relating to timeliness." *In re Est. of Schultz*, 10 N.W.3d 146, 151 (Iowa Ct. App. 2024). No party sought further review, and we thus treat the unenforceability of the family settlement agreement as law of the case.

On remand, the district court set a review hearing. The hearing order stated that the 2003 will "was never offered for probate as the matter was resolved pursuant to the [family settlement agreement]," and that, as a result, "the deadline to challenge the will does not begin to run until the will is offered for probate." The order stated that the district court would hear argument on the issue, but that "it appears from the record that the will was filed but not for the purposes of following [its] direction."

All beneficiaries attended the review hearing. Ten days later, Annette filed proposed procedures for probate to resume. The proposed procedures provided that the executor would "refile" the 2003 will and send notice advising all beneficiaries "that the will has been filed" and that they had "30 days within which to file any objection to the will." The proposed procedures further provided that any objecting beneficiaries "shall thereafter file a petition to set aside the probate of the will in the manner required by Iowa Code § 633.308." The district court approved the proposal on May 9, 2024, and directed Annette to proceed.

Annette promptly refiled the 2003 will and mailed the notices. On June 6, the plaintiffs in this case—Annette, Jacquelyn, and Deborah's two children—filed

a will contest to set aside the will. They asserted that the 2003 will was invalid based on a lack of testamentary capacity and undue influence. In response, Blaine's three children—Katrina Moreland, Keyli Keifer, and Krista Nebendahl (the "objectors")—filed a motion to dismiss the will contest, arguing that the limitations period in Iowa Code § 633.309 to challenge the will began running when the will was first filed with the court in 2019 and had long since expired, and thus that the plaintiffs' challenge was time-barred.

The district court denied the motion to dismiss. "Because the parties to the settlement agreement did not intend to follow the terms of the will," according to the district court, the plaintiffs "had no reason to believe [the 2003 will] was being presented to the court for distribution pursuant to its terms," and thus the limitations period did not begin to run despite the will's filing with the court.

The objectors sought interlocutory review of the ruling, which we granted. We once again transferred the case to the court of appeals. The court of appeals affirmed the district court's denial of the motion to dismiss, concluding that the filing of the family settlement agreement tolled the limitations period in Iowa Code § 633.309. In its view, the family settlement agreement "effectively served as notice of anticipated contest of the 2003 will," so upon that filing, "those wishing to contest the will but accepting the [family settlement agreement] resolution had no obligation to file a contest, as it was not yet a justiciable controversy." It framed the district court's direction to the executor to refile the 2003 will without the family settlement agreement and resend the notices to beneficiaries as "an equitable and logical solution, consistent with Iowa courts' treatment of proceedings after invalidation of a will."

The objectors sought further review, which we granted.

II.

Iowa Code § 633.309(1) sets forth the limitations period to contest a will:

> An action to contest or set aside the probate of a will must be commenced in the court in which the will was admitted to probate within the later to occur of four months from the date of second publication of notice of admission of the will to probate or one month following the mailing of the notice to all heirs of the decedent and devisees under the will whose identities are reasonably ascertainable, at such persons' last known addresses.

It is undisputed that the will was admitted to probate on January 29, 2019, and the date of the second publication of notice in the local newspaper was February 13. As a result, the "later to occur" of four months from the second publication or one month from the notice mailing would have required the will contest to be filed by June 2019. The plaintiffs did not file their will contest until June 2024. The issue before us is thus whether the plaintiffs were excused from complying with § 633.309's deadline.

To begin, the statute's text contains no tolling, estoppel, or similar provision that would limit its operation once a will is admitted to probate. *See* Iowa Code § 633.309. This contrasts with a nearby provision in the probate code that provides a deadline for claims by estate creditors, which expressly provides for "equitable relief due to peculiar circumstances." *Id.* § 633.410(3). We generally presume the legislature acts intentionally when it includes particular language in one part of a statute but not another. *See State v. Lind*, 37 N.W.3d 23, 33 (Iowa 2026).

In our prior cases, we have enforced § 633.309's deadline strictly. The parties do not cite any case (and we were unable to find one) in which we excused the deadline for any reason. Indeed, our cases run the other way.

In *In re Estate of Thompson*, heirs petitioned to set aside a will sixteen months after the second publication of notice, alleging that the will was

"the product of fraud," and later replied that the defendants had fraudulently concealed the cause of action. 346 N.W.2d 5, 6 (Iowa 1984). The district court dismissed the will contest, finding it barred as late-filed under § 633.309. *Id.* On appeal, the plaintiffs asserted that the limitations period in § 633.309 could be tolled because of the fraudulent concealment. *Id.* at 6–7.

We affirmed the dismissal based on the petition's untimeliness, finding "a significant difference in principle" between a belatedly discovered *in personam* ("against a person") action because of concealment and "a statutory proceeding to challenge a legal instrument publicly filed in court which the law gives conclusive effect in the absence of a challenge within a specified period." *Id.* at 8; *see also In re Est. of Janssen*, 7 N.W.3d 516, 521 (Iowa 2024) (stating that a will contest is an *in rem* ("against a thing") proceeding because it is an action against the validity of the will itself). We stated our view that "[t]he primary motivation for litigants in will contest challenges is dissatisfaction with the contents of the will, a circumstance which can ordinarily be relied upon to trigger any existing challenge within the statutory period." *Thompson*, 346 N.W.2d at 8. In strictly enforcing the deadline, we noted both "the pressing importance of securing an orderly settlement of estates" and the need "to avoid as much confusion as possible in the vast amount of property rights and titles that pass through probate." *Id.* (quoting *Pedersen v. Dempsey*, 93 N.E.2d 85, 86 (Ill. App. Ct. 1950)).

Similarly, in *In re Estate of Weidman*, a disinherited son filed a will contest two years beyond the deadline but argued that the period had been tolled based on his chronic mental illness during the four-month window after the second publication. 476 N.W.2d 357, 359 (Iowa 1991) (en banc). We affirmed the district court's dismissal, rejecting the plaintiff's argument that § 633.410's exception for "claimants entitled to equitable relief due to peculiar circumstances" applied

to will contests. *Id.* at 365 (quoting Iowa Code § 633.410 (1985)). We also rejected the son's argument that the order admitting the will to probate was a judgment that could not become final without the protections afforded to incompetent parties by Iowa Rule of Civil Procedure 13 (now numbered 1.211), explaining that no judgment had been entered against the son, but rather the expiration of the limitations period in § 633.309 barred his claim. *Id.* at 366. And we again stressed the statute's finality rationale, noting that "[o]nce the time period for filing a will contest action has elapsed, we believe that will proponents, title examiners, and others affected have a right to rely on the finality of the will provisions." *Id.* at 363.

More recently, in *Youngblut v. Youngblut*, we reaffirmed the deadline's firmness and its policy rationale in holding that a disappointed heir's tortious-interference claim was barred because he did not bring it with a timely will contest. 945 N.W.2d 25, 35, 37, 40 (Iowa 2020). "[P]robate is meant to provide a prompt, efficient, centralized way of resolving issues relating to a decedent's estate and getting the estate distributed," which is "one reason for the tight deadlines." *Id.* at 35 (citing Iowa Code § 633.309 (2015)). In holding that the heir's tortious-interference-with-inheritance claim needed to be joined with a timely will contest, we reiterated *Thompson*'s holding that even fraudulent concealment cannot extend the time to challenge a will. *Id.*

The plaintiffs here argue, and the court of appeals held, that the 2003 will, although filed with the district court in 2019, was not operative when originally filed because the simultaneous filing of the family settlement agreement negated the will's terms. A family settlement agreement in probate generally refers to a voluntary contract among the beneficiaries of a decedent's estate to distribute the estate's assets in a manner different from the decedent's will. *See In re*

Swanson's Est., 31 N.W.2d 385, 389 (Iowa 1948). Courts favor family settlement agreements. *In re Guardianship & Conservatorship of Jorgensen*, 959 N.W.2d 670, 676 (Iowa 2021). The plaintiffs argue that the 2003 will did not become operative in the probate case until it was refiled in May 2024, after the court of appeals declared the family settlement agreement unenforceable and remanded the case.

But we have never held that the existence, filing, or later invalidation of a family settlement agreement tolls or restarts the § 633.309 period for a filed will. Nor have we held, more broadly, that a will admitted to probate was somehow not offered for probate, or that a probated will can be "refiled" to restart the clock, based on a family settlement agreement. Our cases involving family settlements have generally pertained to their validity, the parties bound by them, and distribution under them. *See, e.g.*, *Swanson*, 31 N.W.2d at 389–90; *In re Murphy's Est.*, 252 N.W. 523, 525 (Iowa 1934); *Davenport v. Sandeman*, 216 N.W. 55, 58 (Iowa 1927). None have addressed the running of the limitations period for a will contest. Nor have we recognized any equitable or other exception to § 633.309 where notice was properly given. Iowa law recognizes the doctrine of fraudulent concealment, but in *Thompson* we specifically refused to import it into the will-contest setting. 346 N.W.2d at 8.

The court of appeals concluded that once the family settlement agreement was filed, those wishing to contest the will had no obligation to file a contest because no justiciable controversy yet existed. For this proposition, the court cited *Smith v. Smith*, 230 N.W. 401, 403 (Iowa 1930). But *Smith* involved a claim for breach of contract between brothers where one brother had agreed to pay $7,000 in exchange for the other dropping his objections to their mother's will. *Id.* at 401–02. The defendant argued fraud in the inducement of the contract. *Id.*

at 402–03. *Smith* was not a will contest, and it addresses neither the will-contest limitations period nor tolling from a family settlement agreement. Nor does it address the justiciability of a will's validity under the probate code.

The court of appeals also cited *In re Estate of Ditz*, 125 N.W.2d 814, 819 (Iowa 1964), for the proposition that the filing and acceptance of the family settlement agreement equitably tolled the statute of limitations under § 633.309. In *Ditz*, the contestants timely filed their petition but served only some of the will's beneficiaries within the limitations period. *Id.* at 816–17. The issue was whether the failure to timely serve all the beneficiaries constituted a jurisdictional defect requiring dismissal. *Id.* We held that filing the will contest and serving at least one other interested party within the limitations period was sufficient to institute the contest, and that the other parties could be added later without divesting the district court of jurisdiction over the case. *Id.* at 818–19. *Ditz* involved a timely filed will contest; the reference to "tolling" in the opinion related to the joinder, in a will contest, of additional parties who hadn't been served. *See id.* at 816, 819. The case does not support an equitable extension of § 633.309's deadline.

To comply with § 633.309, the plaintiffs needed to file a timely will contest to preserve their lack-of-capacity and undue-influence claims. Once they had filed it, they could have asked the district court to stay the will contest until questions about the family settlement agreement's enforceability were resolved. In the same petition, or by separate application, they could have asked the court to approve the family settlement agreement (with notice to all interested persons). That would have brought Blaine's and Deborah's successors before the court and resolved the family settlement agreement's validity at the outset rather than years later. Alternatively, after filing the will contest, they could have obtained

written joinder from the nonsigning successors before relying on the family settlement agreement. Any of these steps would have complied with the statute's deadlines without forcing the plaintiffs to give up their claims.

Because a will contest is "purely a statutory proceeding," the jurisdictional requirements set by statute "must be complied with." *Ditz*, 125 N.W.2d at 817 (quoting 1 George A. Henry, *The Probate Law and Practice of the State of Indiana* 231 (John S. Grimes ed., 6th ed. 1954)). "So important has this been deemed by courts and legislatures that neither fraud [nor] concealment . . . can upset an order of probate after the time allowed." *Thompson*, 346 N.W.2d at 8 (alteration and omission in original) (quoting *Pedersen*, 93 N.E.2d at 86). We thus reject the plaintiffs' arguments seeking to toll or otherwise avoid the statutory limitations period in this case and hold that the district court erred when it denied the motion to dismiss the will-contest petition filed nearly five years beyond the deadline.

III.

For these reasons, we vacate the court of appeals decision and reverse the district court's ruling denying the objectors' motion to dismiss, and we remand for dismissal of the plaintiffs' will contest.

Court of appeals decision vacated, district court ruling denying the motion to dismiss reversed, and case remanded for dismissal of the will contest.