

IN THE IOWA SUPREME COURT OF IOWA

No. 17-1964

VINCENT ANGERER TRUST and
DEWITT BANK & TRUST COMPANY,
as Trustee of the Vincent Angerer Trust,

Appellants,

vs.

SERENA KONRARDY and CARRIE RIGDON,

Appellees.

APPEAL FROM THE IOWA DISTRICT COURT
FOR CLINTON COUNTY
THE HONORABLE MARK R. LAWSON PRESIDING

APPELLEES' BRIEF

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Iowa Code § 633A.4504. 9, 10, 18, 19
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STATEMENT OF THE ISSUES

**I. THE DISTRICT COURT WAS CORRECT IN DENYING
DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT**

Conoco Inc. vs. Iowa Department of Revenue and Finance, 447 N.W.2d 337 (Iowa 1991)
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Iowa Code § 633A.5202
Iowa Code §633A.4503

ROUTING STATEMENT

Appellees, Serena Konrardy and Carrie Rigdon n/k/a Carrie Burmeister, assert that pursuant to Iowa Rule of Appellate Procedure 6.1101(3)(a) should be transferred to the Iowa Court of Appeals as the issues presented in this appeal can be decided by the Application of Existing Legal Principals.

STATEMENT OF THE CASE

Plaintiffs, sisters, are the beneficiaries of one of five separate Trusts created by the Will of Vincent Angerer. Mr. Angerer died on May 30, 2010. Although Plaintiffs were entitled to immediate distribution they were not provided their distribution for 17 months after Angerer's death. (Petition filed March 15, 2017; App. pp. 8-9). Although the assets of the Trust had significantly appreciated in those 17 months Plaintiffs' distributions were based on date of death values. (Petition filed March 15, 2017; App. pp. 8-9). Therein lies the fighting issue in this case.

Plaintiffs filed their Petition in Equity on March 15, 2017 requesting that the Court through its equitable powers order that the Trustee of the Vincent Angerer Trust re-value the assets of the Trust to reflect the value of the assets on the date of the distributions to the Plaintiffs. (Petition filed March 15, 2017; App. pp. 8-9). The distribution pattern of the beneficiaries of the Trust is set forth at Exhibit "B" appended to the Petition. (Exhibit "B" attached to Petition filed March 15, 2017; App. p. 10). This cause of action was not brought as an action against the Trustee for breach of trust but rather one to construe the terms of the Trust and instruct the Trustee to re-value the assets as of the date of distribution to these Plaintiffs. (Petition filed March 15, 2017; App. pp. 8-9). Such actions are contemplated and authorized pursuant to Section 633A.6202 of the Iowa Code. The present action falls under Sections 633A.6202(a) and (f).

The Defendants filed their Answer on April 26, 2017 admitting that the Plaintiffs' distributions herein were paid in approximately October 2011 some 17 months after the death of Vincent Angerer. The Defendants further admitted that the distribution to Plaintiffs was based upon values

of trust assets at the time of Vincent Angerer's death and that in fact the Trust value assets had generally increased during the period of time between Vincent Angerer's death and the distribution to Plaintiffs herein. Further, the Defendants admitted that upon distribution to the beneficiaries of the Ida Wyatt Trust that Trust assets were in fact re-valued at that time. The Answer also contained affirmative defenses of settlement satisfaction and consent; Statute of Limitations; and a No Contest Clause Defense Not Applicable in this Appeal. (Answer filed April 26, 2017; App. pp. 11-13).

That Defendants filed a Motion for Summary Judgment on September 1, 2017 asking that Plaintiffs Petition be dismissed as being time barred by the one-year statute of limitations under Iowa Code Section 633A.4503(1). (Motion for Summary Judgment, ¶ 5, filed September 1, 2017; App. p. 15). And to rule as a matter of law that Plaintiffs Trust distributions were correctly valued as the date of Vincent Angerer's death. (Motion for Summary Judgment, ¶ 6, filed September 1, 2017; App. p. 15)

On September 25, 2017 the Plaintiffs filed a Resistance to Defendant's Motion for Summary Judgment submitting that the Plaintiffs were simply asking for a distribution of the proper value of the assets at the date of their distribution. (Resistance to Motion for Summary Judgment filed September 25, 2017, ¶ 3; App. p. 74). Plaintiffs also asserted Defendants' claims were not time-barred as the action was for simply a re-valuation of the assets of the trust and not for any breach of trust, mal-administration or mismanagement of the Estate. (Resistance to Motion for Summary Judgment filed September 25, 2017, ¶ 4; App. pp. 74-75). Lastly Plaintiffs asserted that the language as set forth in Paragraph 4 of the distribution section of the Trust does not unambiguously freeze the value of the assets at the date of death when they are distributed 17 months later. (Resistance to Motion for Summary Judgment filed September 25, 2017, ¶ 5; App. pp. 75-76).

On October 6, 2017, Judge Lawson entered an Order Denying Defendants' Motion for Summary Judgment finding their was a genuine issue of material fact regarding the distribution language at Paragraph 4 of

the Trust and finding that there was a further issue of material fact as to whether or not Plaintiffs' claims were time-barred by Section 633A.4504(1) of the Code. (Ruling on Motion for Summary Judgment filed October 6, 2017; App. pp. 126-135). Defendants filed an Application to Reconsider but the Court again Ruled against the Defendants finding specifically regarding the Statue of Limitations issue:

In its summary judgment ruling, the Court denied summary judgment on the defendants' assertion of a statute of limitations defense pursuant to Iowa Code §633A.4504(1). This statute establishes a one-year statute of limitations for claims brought by a beneficiary against a trustee for breach of trust if the beneficiary received an accounting or other report adequately disclosing the existence of the beneficiary's claim.

In their motion to amend or enlarge, the defendants argue that correspondence between the plaintiffs' attorney and the trustee in 2015 - four years after distribution - constitutes such an accounting or report. The defendants assert that since this correspondence occurred in August and September of 2015, the plaintiffs' claims were barred by September 2016. Essentially, the defendants argue that a report provided to beneficiaries after a trust has been distributed can revive or start a statute of limitations.

The Court finds the correspondence does not constitute the type of report or accounting contemplated by §633A.4504(1). For a claim to be barred by this statute, a beneficiary must have “received an accounting pursuant to section 633A.4213 or other report.” Iowa Code §633A.4504(1). Section 633A.4213 clearly refers to accountings provided during the administration of the trust; not after distribution. Post-distribution correspondence is not the type of accounting referred to in §633A.4213.

(Ruling on Defendants’ Motion to Amend or Enlarge filed November 13, 2017; App. pp. 143-146).

This Appeal followed (Application for Interlocutory Appeal filed December 6, 2017;)

STATEMENT OF FACTS

Plaintiffs are beneficiaries of 1 of 5 separate Trusts created by the Will of Vincent Angerer which was executed on March 27, 1998. Vincent Angerer died on May 30, 2010. (Petition filed March 15, 2017, ¶ 2 and Exhibit “B”; App. pp. 8-10). The net value of the Trust Estate at the time of Vincent Angerer’s death was \$1,751,260.98 (Affidavit of Robert Hill, ¶ 4; App. p. 49).

The Trust states in pertinent part in Paragraph 4:

4. INCOME AND PRINCIPAL UPON GRANTOR'S DEATH. Upon the Grantor's death, the Trustee shall hold, manage, invest and reinvest the Trust Estate, including any property added thereto by the Grantor's Last Will and Testament, and shall distribute the net income and principal, as follows:

(a) Upon the death of the Grantor, the Trustee shall distribute outright the Grantor's personal affects and tangible personal household goods in accordance with a written and dated memorandum executed by the Grantor which directs the Trustee to distribute such items to the beneficiaries listed in the memorandum, provided that beneficiary has survived the Grantor. All other personal effects and tangible personal household goods shall be held and distributed in equal shares and outright to the Grantor's then surviving siblings. (Emphasis added)

(b) The Trustee shall divide the remainder of the Trust Estate, as then constituted, including any property added thereto by the Grantor's Last Will and Testament, and any additions thereto and accumulated or undistributed income thereon, as follows:

(i) The Trustee shall divide the Trust Estate into separate shares, equal in value, one (1) such share for the benefit

of each of the Grantor's then surviving siblings, and if a sibling has predeceased with a spouse surviving, then one (1) such share for the deceased sibling's spouse, and one (1) such share for the descendants, collectively, of any deceased sibling of the Grantor who has no spouse surviving. The Trustee shall distribute [subject to the provisions of subparagraph 4(d) hereof] each share set aside for the descendants of a deceased sibling of the Grantor who has no spouse surviving, to such descendants, per stirpes. (Emphasis added) (Exhibit "A" - Vincent Angerer Trust, dated March 27, 1998; App. pp. 29-48).

The Trust obviously set forth in Paragraph 4(a) those assets of the grantor which were to be distributed outright at the time of the grantor's death as they were then valued. Paragraph B however mandated that the rest of the grantor's property to be divided in 5 equal separate shares which were to be held, managed, and income paid to the beneficiaries of each of the 5 trusts. (Emphasis added)

While the Defendants claim that "the language of Section 4(b) of the Trust" - i.e. "upon the death of the grantor" and "as then constituted"

unambiguously provides that the Plaintiffs interest in their share of the Trust is vested and valued at the time of Vincent Angerer's death, this is not correct. As aforesaid Section 4(a) of the Trust sets forth the items which were to be distributed outright at the time of death as they were then valued. However, Section 4(b)(i) of the Trust does not contain the words "upon death of the grantor and as then constituted." These phrases in prior sections refer to the vesting of the interest of the beneficiaries at the time of the grantor's death. The Estate "as then constituted" was in fact divided into 5 separate and equal trusts after the distributions set forth in Paragraph 4a. So the Plaintiffs' shares were vested as of the time of Vincent Angerer's death but there is no language in the quoted sections that would freeze the value of the assets at that time.

Although Sections 4(b)(i) and 4(b)(ii) distinguish between when certain classes of beneficiaries entitled to receive their distributions they do not necessarily differentiate as to the valuation of the distributions. Rather the language "as then constituted" used in both paragraphs 4(b) and 4(b)(ii) reference the share of assets that the beneficiaries are entitled to when they

are eligible to receive them. If these assets which are segregated for the beneficiaries at the time of their eligibility for distribution increase in value prior to their distribution the beneficiaries should be entitled to that increase in value. (Emphasis added). In fact the Trust itself recognized this ongoing obligation to the Plaintiffs herein by providing them income from the assets that were segregated to them during the pendency of the probate and prior to the distribution. If all asset valuations and obligations were frozen at the date of death of Vincent Angerer, while would the Trust pay income to the beneficiaries for both 2011 and 2012. (Exhibit "C" - 2010 Annual Report and Exhibit "D" - 2011 Annual Report; App. pp. 54-59). Plaintiffs' action is one to insure they are paid to correct value of the assets that they were entitled to when their right to them was vested.

ARGUMENT ON APPEAL

I. THE DISTRICT COURT WAS CORRECT IN DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

A. Preservation of Error

Although Plaintiffs assert that the District Court did not err in its

denial of Defendants' Motion for Summary Judgment, filed September 1, 2017, or the Defendants' Motion to Reconsider Amend or Enlarge filed October 13, 2017, Plaintiffs do agree that error if any was preserved as set forth in Defendants' Preservation of Error section of its Brief.

B. Standard of Review

The Appellate Court when reviewing a district court ruling denying a motion for summary judgment reviews for correction of error at law.

Homan vs. Branstad, 887 N.W.2d 153, 163 (Iowa 2016). Summary Judgment is proper when the moving party has shown "there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." *Id.* When the district court ruling on a motion for summary judgment presents a "legal question involving statutory interpretation," our standard of review on the statutory interpretation issue is for correction of errors at law. *Id.* at 164. *Jahnke v. Deere & Co., Richard Czarnecki, and Bernhard Haas*, S.C. #17-0638 filed May 18, 2018.

C. Discussion

1. **Plaintiffs' Claims are not barred by the Statute of Limitations found in Iowa Code §633A.4503.**

The law mandates that Statutes of Limitations should not be extended or applied to cases not clearly within the provisions of the Statute. *Welp vs. Iowa Department of Revenue*, 333 NW2d 481 (Iowa 1983). Courts do not favor a defense of Statute of Limitations and Statutes of Limitations should not be applied to cases which do not clearly come within the provisions of the Statute. *Sprung vs. Rasmussen*, 180 N.W.2d 430 (Iowa 1970). Even if a Statute of Limitations defense is applicable if there are two interpretations of a Statute of Limitations one giving the longer period to a litigate seeking relief is to be preferred and applied. *Deere & Co. vs. Weyant*, 442 N.W.2d 101 (Iowa 1989), *Conoco Inc. vs. Iowa Department of Revenue and Finance*, 447 N.W.2d 337 (Iowa 1991).

Plaintiffs's claims are not barred by the Limitations under Iowa Code §633A.4503 as the aforesaid limitation section is not applicable to Plaintiffs' Petition and even if it were these claims would not be barred pursuant to

the aforesaid section. In order to attempt to avail themselves of the protections of Section 633A.4503 the Defendants mischaracterized the Plaintiffs' action as one for breach of trust. In fact, Plaintiffs brought their action not for breach of trust but as an application to correctly construe the provisions of the aforesaid Trust to allow for the increase in value of the assets they were entitled to at the time of their distribution. Such actions are contemplated and allowed under §633A.6202(2)(a) and (f). Such actions recognized by Chapter 633A.4 concerning the internal affairs of a Trust to determine the terms of the Trust and instruct the Trustee thereon are certainly contemplated under the aforesaid code sections. Obviously since the action is not for one of breach of trust the Statute of Limitations contained in Iowa Code §633A.4503 is not applicable to this action.

Defendants' claims in their Motion for Summary Judgment are similar to those made by Defendants in the case of *Kenneth W. Turner vs. Iowa State Bank & Trust Company of Fairfield, Iowa and Earl Wallace Dick*, 743 N.W.2d 1 (Iowa 2007). The Defendants in the Turner case as the Defendants herein attempted to avoid the claims of Plaintiff Turner by intentionally

mischaracterizing his action as one for a breach of trust. The Court in the Turner case found in addressing a Motion to Dismiss that the Court could not say that the uncontroverted facts of the Petition established a claim for breach of trust. *Kenneth W. Turner vs. Iowa State Bank & Trust Company of Fairfield, Iowa and Earl Wallace Dick*, 743 N.W.2d 1, 6-7 (Iowa 2007). The Court is presented for the same situation herein with a Defendant attempting to mischaracertize Plaintiffs' cause of action in order to impose a Statute of Limitations.

Even if the aforesaid code section were applicable to the Plaintiffs' claims, Section 633A.4504 would not be applicable on its face. Section 633A.4504 requires that in order to enforce its provisions it must be shown that the Plaintiffs herein received an accounting or other report to make them aware of the potential existence of a claim. The Plaintiffs were never provided any accountings or reports from the Defendants in this matter that would bring them within the parameters of putting them on notice of the existence of a claim. None of the accounting or "reports" provided by the Trustee to Plaintiffs provided the necessary information to make them

aware of the existence of a claim as none referenced the underlying increase in land values supporting a greater distribution. It is undisputed that none of the accountings contained this information. As far as reports referenced in the Statute are concerned those reports must come by or on behalf of the Trustee. Contrary to the assertion of the Defendants the term "report" is in fact specifically defined in the Statute. Section 633A.4504(4) specifically reads as follows:

For the purposes of this section "report" means a document including but not limited to a letter *delivered by or on behalf of the Trustee* to a beneficiary of the Trust. (Emphasis added.)

Obviously pursuant to the Statute the triggering information must flow from the Trustee. Reviewing the record herein there are no such reports from the Trustee. In fact any reports from the Trustee that were received by either Plaintiffs or their counsel from the Trustee clearly stated that Plaintiffs did not have a claim. (See Exhibit's "C, D and G" - Annual Reports 2010, 2011, and 2013; Exhibit "I" - letter from Roger Hill dated 8/19/2015; Exhibit "3" - letter from Roger Hill dated 9/25/2015; Exhibit "7" -

letter from Roger Hill dated 10/11/2016; and Exhibit "9" - letter from Roger Hill dated 11/9/2016; App. pp. 54-59, 62-65, 67-71, 79, 96-97, 99-100).

Clearly this Statute of Limitations section mandates any triggering information must be flowing from the Trustee. Any other information either discovered by beneficiaries or on their behalf by other parties does not invoke the limitation section. As Judge Lawson correctly found no document was ever delivered to these Plaintiffs by the Trustee which contained information regarding appreciation in land values. (Ruling on Defendants' Motion for Summary Judgment filed October 6, 2017, Page 7; App. p. 132). Any knowledge of the increase in land values of the subject properties to which these Plaintiffs were entitled upon the death of Vincent Angerer herein was gained solely by the Plaintiffs only through the work of either themselves or their own counsel. (See quote from Judge Lawson denial of Motion to Reconsider as set forth previously in the Statement of Facts.) Obviously this section mandates that any information must be flowing from the Trustee to invoke the limitation provisions of this section

and any other information either discovered by the beneficiaries or on their behalf by other parties does not invoke the limitation section.

2. The Trust does not clearly and unambiguously provide that Plaintiffs' Share of the Trust be valued as of the date of the death of Vincent Angerer.

While Plaintiffs herein agree that where the terms of a Will or Trust are unambiguous the Court is precluded from interpreting them.

Matter of Estate of Rogers, 473 N.W.2d 36 (Iowa 1991); *In Re Work Family Trust*, 151 N.W.2d 490, 492 (Iowa 1967). However the Court is allowed to apply technical rules of construction to determine the Testator's intent when the language is ambiguous, conflicting, or the Testator's intent is for any reason uncertain. *Elkader Production Credit Association vs. Eulberg*, 251 N.W.2d 234 (Iowa 1977); *Houts vs. Jameson*, 201 N.W.2d 466 (Iowa 1972).

Plaintiffs strenuously contend that such ambiguity does apply in this particular matter.

First of all, Plaintiffs restate their assertions as set forth in the Statement of the Facts, *Supra* (pages 10-14). Judge Lawson is spot on in

his analysis of the Defendants attempt to cobble together the phrases of “upon the Grantor’s death” together with the phrase “as then constituted” to conclude that the distribution must ipso facto be based upon the date of death values. As Judge Lawson set forth in his Ruling this ignores other language in the Trust Agreement requiring the Trust to “manage, invest, and re-invest the Trust Estate”. After holding, managing and investing the Trust Estate, the Trustee is to divide the Trust as then constituted including any additions thereto and accumulative or undistributed income into the Trust shares. (See Ruling on Defendants’ Motion for Summary Judgment filed October 6, 2017; App. pp. 126-135.) More importantly as Judge Lawson pointed out in his Ruling, the phrase upon the Grantor’s death could reasonably mean that that is when the Trustees duties begin and the shares of the various beneficiaries may be vested. And as Judge Lawson correctly points out the Trust document is silent as to the date on which the assets are to be value. (See Ruling on Defendants’ Motion for Summary Judgment filed October 6, 2017; App. pp. 126-135.) There can be no greater ambiguity.

The Trust document itself contemplates an ongoing obligation and future obligation to these Plaintiffs for if everything were frozen for these Plaintiffs at the date of the Grantors death why would the Trust pay income to these Plaintiffs prior to the distribution in the years 2010 and 2011. In fact the words “upon the death of Grantor” appear in Paragraph 4 and 4a exclusively. These words simply refer to the vesting of interests at the time of grantor’s death. The term “as then constituted” as contained in Paragraph 4b refers to the remainder of the Estate after those distributions pursuant to Paragraph 4a. The remaining assets are then to be divided into 5 separate and equal trusts which are all vested at the time of the death of Vincent Angerer but not valued at that time. In other words the aforesaid language sets forth and references the share of the assets that the beneficiaries are entitled to when they are eligible to receive them. If these assets which were segregated for the beneficiaries at the time of their eligibility for distribution increase in value prior to their distribution, they should be entitled to that increase in value.

Lastly, as regarding these Plaintiffs vs. the Ida Wyatt share which was re-valued and distributed almost immediately upon Ida Wyatt's death, Plaintiffs contend that Paragraphs 4b(i) and 4(b)(ii) only set forth different triggering events for when the beneficiaries under each paragraph became eligible for their distribution. The beneficiaries of the Ida Wyatt Trust under Paragraph 4b(ii) were not eligible for and entitled to distribution until the death of Ida Wyatt. The only difference between those beneficiaries and Plaintiffs herein is the fact that the payment to Ida Wyatt's descendant's was quickly accomplished after the triggering event entitling them to their share. Plaintiffs herein however had to wait 17 months for their distribution after the triggering event (the death of Vincent Angerer) to receive their distribution. Clearly they should be entitled to receive the true value of their distribution at the time they received it.

CONCLUSION

That because the District Court herein did not error in denying Defendants' Motion for Summary Judgment on either basis contended in

their Appeal this Court should affirm the District Court's Denial of Defendants' Motion for Summary Judgment and return this case to the Trial Court for further proceedings herein.

**CERTIFICATE OF COMPLIANCE WITH
TYPE-VOLUME LIMITATION TYPEFACE
REQUIREMENTS AND TYPE STYLE REQUIREMENT**

1. This brief complies the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because:

This brief contains 3,718 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because:

This brief has been prepared in a proportionally spaced typeface using WordPerfect X5 in 14 point Palatino Linotype font.

/s/ Harold J. DeLange, II
Harold J. DeLange, II

7/2/2018
Date

CERTIFICATE OF SERVICE AND FILING

I certify that on the 2nd day of July, 2018, I, the undersigned, did file electronically this Appellees' Brief and Request for Oral Argument with the Clerk of the Iowa Supreme Court using the Electronic Document Management System.

I certify that on the 2nd day of July, 2018, I, the undersigned, did serve this Appellees' Brief on the attorney for the Appellants via electronic service of the Electronic Document Management System. Upon information and belief, the attorney for the Appellants is a registered filer pursuant to Iowa R. Civ. P. 16.201.

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