IN THE COURT OF APPEALS OF IOWA

No. 0-064 / 09-0858
Filed March 10, 2010

**IN THE MATTER OF THE ESTATE OF
EVELYN C. SIEFERING, Deceased,**

DELORIS WEAVER and SHERYL MURKEN,
Intervenors-Appellants,

vs.

BRENDA ELY and KEN ELY,
Executors-Appellees.

Appeal from the Iowa District Court for Page County, Greg W. Steensland, Judge.

Estate heirs appeal from the probate court's ruling on the executors' application requesting the court to construe a will. **REVERSED AND REMANDED.**

John P. Dollar of Wilson, Deege, Dollar, Despotovich & Riemenschneider, West Des Moines, for appellants.

Michael F. Mahoney and Meredith C. Mahoney Nerem of Jordan & Mahoney Law Firm, P.C., Boone, for appellees.

Considered by Vaitheswaran, P.J., and Potterfield and Mansfield, JJ.

POTTERFIELD, J.

Estate heirs appeal from the probate court's ruling on the executors' application requesting the court to construe a provision of Evelyn Siefering's will. We reverse and remand.

I. Background.

Evelyn Siefering died on October 8, 2008. Item Three of Evelyn's will provides:

> I hereby will, devise and bequeath unto my husband, Wilbur Siefering, should he survive me, the household furniture, fixtures and car located in and about our home so long as he continues to reside in our home. This bequest is personal to my husband and in the event he should predecease me it shall lapse and such items shall become a part of the residue of my estate.

Item Four of Evelyn's will then disposed of the "rest, residue and remainder" of her estate in eight equal parts. When Evelyn died in 2008, she was survived by her husband, Wilbur, who died March 30, 2009.

On March 5, 2009, the executors of Evelyn's estate, Brenda Ely and Ken Ely, filed an application to construe Item Three of her will. The executors asked the court to determine whether the above quoted provision "is an outright bequest to the Decedent's spouse, in the event he survived Decedent" or whether it is "in the nature of a life estate." They also asked that the court determine the definition of "home" as utilized in the provision.

A hearing was held on April 13. Lyle Siefering, Wilbur's son, testified that Evelyn and Wilbur lived in the same house for more than thirty years after their marriage. The house was held in joint tenancy. Evelyn and Wilbur were elderly and "had been living in this home doing a very good job taking care of

themselves" before Evelyn was hospitalized. Wilbur was informed that Evelyn would not be able to return home. Lyle testified that his father said, "wherever Evelyn has to go, I will go also." In anticipation of Evelyn's release from the hospital and recovery, the family rented two adjoining apartments[1] at an assisted living facility. Lyle stated Wilbur moved into his assisted living apartment one day before Evelyn died.

Lyle further testified that Wilbur and Evelyn had a prenuptial agreement. When asked if Wilbur and Evelyn kept their finances separate, he testified:

> They definitely did. I mean, it was—I mean there was [sic] all kinds of things that I can tell you, all kinds of stories. I bought groceries for them many times, and she got half gallon of AE milk, and he got a gallon of Fastco milk. They made separate decisions.

Lyle testified that in preparing for Evelyn's funeral, his sister was looking in Evelyn's jewelry box and found an envelope with Brenda Ely's name on it. Brenda was informed of the envelope and later opened it. Inside were two notes: one "was some detail where to find the safety deposit box and where the Will was, etc."; the other was a "list of possessions that she was designating to different people." Lyle testified the handwriting on both notes was Evelyn's. He further testified that in the "past couple of years" Evelyn had been giving things away and some household items had markings on them designating a specific person.

Brenda Ely testified Evelyn informed her in 2004 that she was named as executor, but that she was not aware of the terms of Evelyn's will prior to her

[1] Lyle testified these were one-room apartments and not big enough to accommodate both Evelyn and Wilbur. "And Evelyn and dad had a prenuptial agreement, so we rented one room for Evelyn and one room for dad."

death. She testified that she opened the envelope about which Lyle testified. She recognized Evelyn's handwriting on the two items in the envelope.

Deloris Weaver testified that she is one of the beneficiaries of Evelyn's estate. She testified that she objected to the Elys' initial manner of distributing Evelyn's personal property (they had given some items to the persons noted on the list found in the envelope and then contacted all potential heirs and asked if there were household items in which they were interested). Deloris testified the handwriting on the list was Evelyn's. Deloris further testified it was her belief that all personal items not on the list should be sold. She was asked, "So is it your position that your aunt's intention was to sell every item of her history?" Deloris responded, "I don't know. I guess I wouldn't want to say what [Evelyn's] intention was."

Deloris further testified that Evelyn and Wilbur had a prenuptial agreement, which was filed with the recorder's office. The agreement was dated May 12, 1976. Section Eight of that agreement provides:

> DEATH OF PARTIES
>
> Prospective husband and prospective wife agree that the said prospective husband shall have no right, interest or claim in the estate of prospective wife in the case of her death, either as to real estate or personal property, wheresoever situated, which she might own at that time, and prospective wife shall have no right, interest or claim in the estate of prospective husband in the case of his death, either as to his real estate or personal property, wheresoever situated, which he may own at that time. Nothing contained in this paragraph shall, however, prohibit either of the parties hereto from making a testamentary disposition in favor of the other.

Evelyn and Wilbur were married in June of 1976.

On April 29, 2009, the probate court filed its ruling. The court found the provision at issue "anything but clear and unambiguous." The court found the phrase "so long as he continues to reside in our home," not to be a condition subsequent such as referred to in *Helms v. Helten*, 290 N.W.2d 876 (Iowa 1980), but instead "an inarticulate and poorly drafted reference to a continuing relationship between Wilbur and Evelyn." The court concluded, "[T]he intent of it is discernable by this Court. It is intended as an outright bequest to Wilbur and shall be construed as such." The court continued:

> Even if this Court were to find that the phrase in question is a condition subsequent, this Court finds that the condition is met. There are many elderly persons who live in an assisted living arrangement who routinely tell their family that they are only going to live in that assisted living arrangement until they go "home". The home of Wilbur and Evelyn remained their home despite the assisted living arrangements.
>
> While this Court finds that Item 3 should be construed as an outright bequest, it also finds that were this a condition subsequent, the condition was met.

A motion to enlarge was filed. The probate court ruled: "The net effect of the Court's Order was that all personal property in and about the home was an outright bequest to Decedent's Spouse Wilbur Siefering. None of that property would pass to the residuary beneficiaries."

Two heirs, Sheryl Murken and Deloris Weaver, appeal. They contend the provision at issue should be construed as granting Wilbur the use of the basic furnishings of the house for so long as he lived there, and that at Wilbur's death, all of Evelyn's personal property in the home "belongs to Evelyn's estate." They also contend the court erred in failing to rule the list of purported bequests of personal property was invalid.

II. Scope and Standard of Review.

A declaratory judgment action to interpret a will is tried in equity, and our review is de novo. *In re Estate of Rogers*, 473 N.W.2d 36, 39 (Iowa 1991). We give weight to the trial court's findings of fact, but are not bound by them. *Id.*

III. Discussion.

> In interpreting wills . . . , we are guided by well settled principles: (1) the intent of the testator is the polestar and must prevail; (2) this intent, however, must be derived from (a) all of the language contained within the four corners of the will, (b) the scheme of distribution, (c) the surrounding circumstances at the time of the will's execution and (d) the existing facts; (3) we resort to technical rules or canons of construction only when the will is ambiguous or conflicting or the testator's intent is uncertain. In determining intent, the question is not what the testator meant to say, but rather what is the meaning of what the testator did say.

Id.

We begin with the words of devise:

> I hereby will, devise and bequeath unto my husband, Wilbur Siefering, should he survive me, the household furniture, fixtures and car located in and about our home so long as he continues to reside in our home. This bequest is personal to my husband and in the event he should predecease me it shall lapse and such items shall become a part of the residue of my estate.

The objectors argue the court erred in concluding "household furniture [and] fixtures," included all Evelyn's personal property. They also argue the probate court erred in finding the clause constituted an outright bequest to Wilbur. They assert that the phrase "so long as he continues to reside in the home" constitutes a "specie[s] of life estate in personal property." We begin with appellants' second argument and conclude the appellants have the better argument as to Evelyn's intent.

"[T]he words, 'I will, devise and bequeath,' might give a qualified ownership," depending on the context and the testator's intent. *Lowrie v. Ryland*, 65 Iowa 584, 586, 22 N.W. 686, 687 (1885). "So long as" has a temporal meaning. The phrase is defined as meaning, "during and up to the end of the time that: while." Webster's New Collegiate Dictionary 1098 (1981) ("Webster's"). The probate court's finding of an outright bequest is contradicted by the words of limitation used in Evelyn's will: "so long as he continues to reside in our home." As one court has stated:

> And we are of opinion that the words 'to remain hers so long as she shall be or remain unmarried after my decease' are words of limitation, which clearly show it to have been the intention of the testator to limit the duration, at longest, to the natural life of his widow.

Nash v. Simpson, 3 A. 53, 54 (Me. 1886). *Helms v. Helten*, 290 N.W.2d 876, 879-80 (Iowa 1980), while not particularly on point, recognizes an "associational limitation" as a condition subsequent that must be enforced or fail. ("I give . . . to my son . . . , as long as he refrains from marrying or associating with . . . [named woman], the following described property.").[2] We agree with appellants that she intended a species of life estate.

We also agree with appellants that the phrase "household furniture, fixtures and car in and about our home" does not entail all of Evelyn's personal property. It is a "universally accepted rule of construction" that we presume that "the words of the will are used in their natural, usual, popular and conventional

[2] In the district court, the parties also disputed the meaning of the term "home." However, that argument is not made here.

meaning." *In re Estate of Syverson*, 239 Iowa 800, 807, 32 N.W.2d 799, 802 (Iowa 1948); *In re Estate of Grulke*, 546 N.W.2d 626, 627 (Iowa Ct. App. 1996).

> If a simple reading of the will, using the words in their ordinary and natural sense, does not unmistakably reveal the maker's intention, the court may resort to certain accredited canons of construction. These canons of construction permit us to impute a meaning conforming to the testator's probable intention and one that is most agreeable to reason and justice. In so doing we must put ourselves in the testator's shoes as nearly as possible, taking into consideration the situation of the testator and the facts and circumstances surrounding him at the time the will was executed.

Estate of Grulke, 546 N.W.2d at 628 (citations omitted).

Item One of Evelyn's will grants the executor(s) authority "[t]o sell, transfer or convey any real or personal property which I may own at the time of my death." The devise to Wilbur in Item Three does not refer to "personal property," but rather to "household furniture, fixtures and car." We conclude the latter phrase means something other than the former.[3]

Evelyn's will was executed in 2002 at which point she and Wilbur had been married for more than twenty-five years. Yet, they continued to maintain separate finances. Evelyn and Wilbur owned the house in joint tenancy, but Evelyn's note which was found states, "[m]ost of the furniture is mine except large TV, desk and china closet in dining area, bookcase and end tables in Den." (No one disputes that the majority of household contents were Evelyn's.) Putting ourselves in Evelyn's shoes as nearly as possible, taking into consideration her situation and the facts and circumstances surrounding the time the will was executed, we agree with appellants that Evelyn intended Wilbur to have the

[3] The probate court noted as much, "But household furniture appears to me to be more restrictive than just all personal property in the house."

benefit of the household items for the limited time "he continued to reside in the home."

The appellants point out that a fixture is "an article in the nature of personal property which has been so annexed to the realty that it is regarded as a part of the land." Black's Law Dictionary 575 (5th ed. 1979). This appears to be the ordinary meaning of the term. *See* Webster's at 430 ("2. Something that is fixed or attached (as to a building) as a permanent appendage or as a structural part."). Household furniture is defined as "moveable articles used in readying an area . . . for occupancy or use." Webster's at 462. We believe the term is subject to a common understanding and includes such items as chairs, tables, desks, beds, dressers, etc. Evelyn intended Wilbur to have the right of their enjoyment while he resided in their home. Upon Wilbur's death, those items belonging to Evelyn were subject to distribution as part of her estate.[4]

All other personal property owned by Evelyn became part of her estate at her death. We further conclude Evelyn's list purportedly reserving some items of personal property as "hav[ing] been spoken for" fails to comply with statutory requirements.

Iowa Code section 633.276 (2007) provides:

> A will may refer to a written statement, letter, or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, except tangible personal property used in trade or business. Tangible personal property, for purposes of this section, includes household goods, furnishings, furniture, personal effects, clothing, jewelry, books, works of art, ornaments, and automobiles. If the writing is dated and is either in the handwriting of the testator or is signed by testator, and if it describes the items and distributees with reasonable certainty, the

[4] The fixtures, however, by definition were part of the house.

> personal representative shall distribute the described items of tangible personal property to the distributees entitled to them. The writing may be referred to as one to be in existence at the time of the testator's death. The writing may be prepared before or after the execution of the will. The writing may be altered, added to, or changed in any respect by the testator after its preparation, and it may be a writing which has no significance apart from its effect upon the dispositions made by the will. Property passing by the writing shall be considered as property passing as a specific bequest under will.

Evelyn's will makes no reference to a written list to dispose of items of tangible personal property. Moreover, the list is not dated. Consequently, no distribution can be made pursuant to the list.[5]

We reverse and remand for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

[5] However, this does not mean that Evelyn's heirs may not honor her wishes should they choose to do so. *See In re Estate of Swanson*, 239 Iowa 294, 300, 31 N.W.2d 385, 389 (1948) (noting that beneficiaries of a will are not required to accept its provisions; they may divide up the property as they see fit, and may do so even before they receive the property as family settlements are favored by the courts).