IN THE COURT OF APPEALS OF IOWA

No. 0-218 / 09-1309
Filed May 26, 2010

IN THE INTEREST OF THE GUARDIANSHIP AND CONSERVATORSHIP OF JOHN DAVID HATFIELD,

JOHN DAVID HATFIELD,
Ward-Appellant.

Appeal from the Iowa District Court for Adair County, Gregory A. Hulse, Judge.

A ward, through his guardian ad litem, appeals a district court order approving the conservator's recommended sale of certain stock held in the ward's estate. **REVERSED.**

Joel C. Baxter of Beverly Wild Law Office, P.C., Guthrie Center, for appellant.

Rebecca A. Brommel of Brown, Winick, Graves, Gross, Baskerville & Schoenebaum, P.L.C., Des Moines, for appellee U.S. Bank, N.A.

David Craig of Finley, Alt, Smith, Scharnberg, Craig, Hilmes & Gaffney, P.C., Des Moines, for appellee Ann Hatfield Merritt.

Heard by Vaitheswaran, P.J., Doyle, J., and Schechtman, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

VAITHESWARAN, P.J.

John Hatfield appeals a district court order requiring the sale of ExxonMobil stock in his portfolio as recommended by his conservator.

I. Background Facts and Proceedings

Eighty-four-year-old John David Hatfield has a net worth of approximately $2.5 million. About half of his portfolio consists of ExxonMobil stock he has owned for fifty years. Hatfield's conservator, U.S. Bank, determined his concentration in this stock was too high. Accordingly, the bank recommended

> a plan to liquidate holdings in ExxonMobil Corporation stock to reduce the concentration by a minimum of ten percent (10%) each year for the next four (4) years until the total holdings in ExxonMobil corporation reaches ten percent (10%) of the market value of the account.

Hatfield's guardian, daughter Ann Hatfield Merritt, opposed the bank's plan. Following a hearing, the district court approved the conservator's recommendation to sell the stock but modified the proposed plan to provide for its sale over a period of two years, rather than four. The court reasoned

> that it is imprudent to have such a high percentage of stockholdings in comparison to total assets in the conservatorship and, in particular, such a high concentration of ExxonMobil stock, and those holdings should be reduced in compliance with the Iowa Uniform Principal and Income Act. Because of the age and health of the ward, the proceeds realized from any disposition of stock should be invested in highly rated fixed-income securities with a maturity of five years or less in order to alleviate market risk. Equity fund holdings should be reduced to not more than fifteen percent (15%) by December 31, 2011, in a manner calculated to use any losses on non-ExxonMobil stock to minimize tax consequences.

Hatfield appealed. The district court's order requiring the sale of the stock was stayed pending appeal. Our review is de novo. *In re Barkema Trust*, 690 N.W.2d 50, 53 (Iowa 2004).

II. Analysis

Hatfield argues:

> The Court, in agreeing with the Conservator's recommendation to reduce the number of shares of ExxonMobil Stock, failed to conduct an adequate inquiry into Mr. Hatfield's unique circumstances.

He also maintains that U.S. Bank breached a fiduciary duty to him.

As a preliminary matter, we note that the breach of fiduciary duty argument was not preserved for our review. *See Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002). Therefore, we will limit our discussion to whether the district court acted equitably in ordering the sale of the ExxonMobil stock.

On this question, the parties agree that the district court was obligated to consider the statutory factors governing prudent investing by fiduciaries. *See* Iowa Code §§ 633.123, 633.641, 633A.4302 (2009).[1] The key factor in this case is "[t]he expected tax consequences of investment decisions or strategies." *Id.* § 633A.4302(3)(c). Hatfield notes that he bought the ExxonMobil stock approximately fifty years ago at $15.19 per share and the projected sale price was $70 per share. He informed the district court that if the shares were sold during his lifetime, the gains would be taxed at a federal capital gains rate of fifteen percent and a state rate of nine percent. Given the low price per share at the time of purchase, Hatfield estimates that he would have capital gains of $54.81 per share, resulting in federal capital gains taxes of $50,000 and state capital gains taxes of $23,000 in 2009 alone. In contrast, if the stock were held until after Hatfield's death, Hatfield asserts that "[h]is beneficiaries would receive

[1] The Iowa Uniform Principal and Income Act, Iowa Code chapter 637, was inadvertently cited by the district court. The parties agree it is not applicable.

the benefit of a stepped-up basis for valuation of the stock, eliminating all adverse tax consequences resulting from capital gains." U.S. Bank acknowledges the tax consequences of a sale during Hatfield's life but argues that the gains would be offset by losses in the sale of other investments.

We agree with Hatfield that the tax consequences of a sale of the stock during his lifetime, assuming a sale price of $70 per share, would be severe. By the conservator's own projections, "the sale of 3,730 shares would result in approximately $44,000 in additional federal taxes and approximately $16,000 in state taxes in 2009 for a total of $60,000." While the bank stated that the tax rate would decrease if more shares were sold, the additional tax burden would still be significant.

Under the Internal Revenue Code, that tax burden might be lessened if the stock were sold after Hatfield's death. *See* 26 U.S.C. §§ 1014(a), 1022(a). Prior to 2010, beneficiaries could avail themselves of a "stepped-up basis," which allowed them to establish a basis in property obtained from a decedent at "the fair market value of the property at the date of the decedent's death."[2] *Id.* § 1014(a)(1). While that stepped-up basis is not in effect for 2010, beneficiaries may take advantage of a $1.3 million aggregate basis increase, which allows the estate to allocate $1.3 million to increasing the basis of qualified assets held by the estate. *Id.* § 1022(b). After 2010, the law will revert to the pre-2010 law, which provides for a stepped-up basis. Economic Growth & Tax Relief

[2] Black's Law Dictionary defines "basis" in the tax context as "[t]he value assigned to a taxpayer's investment in property and used primarily for computing gain or loss from a transfer of the property." Black's Law Dictionary 161 (8th ed. 2004). "Stepped-up basis" is defined as "[t]he basis of property transferred by inheritance." *Id.*

Reconciliation Act of 2001, Pub. L. No. 107-16, § 901(a), 115 Stat. 150. Under these circumstances, we conclude an immediate stock sale is not equitable. *See Hanson v. Minette*, 461 N.W.2d 592, 597 (Iowa 1990) (noting that trustee considered "the fact that much of the income realized by the sale would result in large capital gains due to the extremely low basis in the stock").

Our conclusion is bolstered by Hatfield's advanced age. *See* Iowa Code § 633.123(1)(a) (stating that the fiduciary should consider the length of time the fiduciary will have control over the estate assets). While the parties correctly point out that Hatfield's life expectancy is not known, the fact that he was eighty-four years old at the time the district court entered its order lends credence to his assertion that "it would be virtually impossible for the estate to recover even a portion of the loss incurred through capital gains tax during Mr. Hatfield's lifetime." Additionally, while his health was improving, it was marked by several chronic diseases.

We are also persuaded by Hatfield's assertion that the ExxonMobil stock should not have been ordered sold because it did not fare as badly during the economic downturn of 2008-2009 as many of his other equity holdings. While there is no guarantee that its positive performance will continue, the significant appreciation over half a century was a factor that militated in favor of holding the stock.

Related to this factor, we note that while the ExxonMobil stock was a large component of the assets managed by U.S. Bank, Hatfield has farmland of at least the same value outside the conservatorship. This farmland could cushion the blow of a decline in the stock's value. *See id.* § 633A.4302(3)(d), (f)

(requiring consideration of "[t]he role that each investment or course of action plays within the overall trust portfolio" as well as the "[o]ther resources of the beneficiaries" when investing and managing trust property).

Finally, it is apparent that the ExxonMobil stock was of special value to Hatfield and his two daughters. Hatfield's guardian—and potential beneficiary of his estate—testified as follows,

> I just feel like Mobile Exxon has been one of the best performers that we have had in this turbulent economy, and I want to keep it. I don't want to go into any of these—any more of these fund products, and that's my main objection, is I want to keep Exxon just as it is. And it's been solid. We have owned it for the last 50 years, and I want to see it stay. It's kept us alive, or my dad and our family on both sides, it has kept—it has been the one solid stock that we have seen over all these many years, and I don't want to do anything with it except hold on. It's going up, by the way.

The family members were so intent on holding the stock that they expressed a willingness to execute waivers absolving the bank of liability for a reduction in the stock's value. *See id.* § 633A.4302(3)(h) (requiring consideration of "[a]n asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries").

We conclude Hatfield's ExxonMobil stock should not have been ordered sold. The trial court's order approving the "Third Annual Report of Conservator" is reversed, in part, and paragraph 4 of the order is vacated; the remainder of the order is approved.

REVERSED.