

IN THE COURT OF APPEALS OF IOWA

No. 0-853 / 10-0963
Filed December 22, 2010

**IN THE MATTER OF THE ESTATE OF
HELMA NEDDERMEYER, Deceased.**

EDWARD NEDDERMEYER,
Intervenor-Appellant,

vs.

MARION NEDDERMEYER,
Executor-Appellee.

Appeal from the Iowa District Court for Crawford County, Edward Jacobson, Judge.

Beneficiary under Helma Neddermeyer's will appeals from the district court's interpretation of method required to execute an option to purchase under the will. **AFFIRMED.**

Bradley J. Nelson and Jennifer M. Zupp of Norelius & Nelson, P.C., Denison, for appellant.

Bryan D. Swain of Salvo, Deren, Schenck & Lauterbach, P.C., Harlan, for appellee executor.

Matthew J. Hudson, Harlan, for Gailen Neddermeyer.

Derrick R. Franck of Mundt, Franck & Schumacher, Denison, for Marion and Larry Neddermeyer.

Considered by Mansfield, P.J., and Danilson and Tabor, JJ.

DANILSON, J.

Helma Neddermeyer had five children: Edward, Denise, Marion, Larry, and Gailen, whom she named residual beneficiaries in her 2003 will. Article V of Helma Neddermeyer's will provides:

I hereby give to my son, Marion Neddermeyer, the first option to purchase the following described real estate . . . upon the following terms and conditions:

(1) The price of the real estate under this option shall be sixty-five percent (65%) of the appraised value, not special use value, established for Iowa Inheritance purposes in my estate.

(2) My executor is authorized to make said sale for cash.

(3) This option shall be executed within six (6) months from the date of my death or the same shall be null and void. This right to this option may be declined by Marion Neddermeyer by filing in the Court having jurisdiction of my estate a written notice of his intent not to exercise the option. Once this declination is filed with the Clerk of said Court, the option shall be void and shall not be reinstated.

(4) This option is personal to my son, Marion Neddermeyer, and shall not be assignable to any other party and shall not survive him.

(5) Notice of his intention to exercise the option shall be filed in writing with the Clerk of Court having jurisdiction of my estate.

Article VI contains identical terms for an option to purchase different property by Larry.

Helma died on January 25, 2009, and on February 4, 2009, her will was submitted for probate in Crawford County. Marion was appointed executor. On July 20, 2009, Marion filed a "Notice of Intention to Exercise Option to Purchase Real Estate Under Terms of Will." On December 20, 2009, Marion filed an "Application for Real Estate Purchase By Executor," with an offer to purchase the property for \$647,920. Edward resisted the application to purchase, contending although notice of intent to exercise his option was filed by Marion "in compliance with condition five of the option, there was no 'execution' of the option by him."

The district court overruled the resistance and approved the sale by the estate to the executor. Edward appeals.

What did Helma mean when she stated that an option to purchase had to be “executed” within six months of her death? The district court concluded that in context, the term meant Marion had to file his notice of intent to exercise his option within the six-month period. Edward Neddermeyer contends something more was required.

This appeal involves a determination of the parties’ rights and obligations in property devised by will. The proceeding is equitable in nature, and our review is de novo. Iowa Code § 633.33 (2009); Iowa R. App. P. 6.907.

When a will is presented for interpretation, a court will look to the four corners of the will, exploring the language of the will, the scheme of distribution, and facts and circumstances surrounding making of the will. *In re Estate of Rogers*, 473 N.W.2d 36, 39 (Iowa 1991). The testator’s intent is the polestar and must prevail. *In re Estate of Redenius*, 455 N.W.2d 295, 297 (Iowa Ct. App. 1990). In ascertaining the intent of a testator, we rely primarily on the language contained in the will; however, the substance and intent, rather than the words, are to control. *Russell v. Johnston*, 327 N.W.2d 226, 229 (Iowa 1982).

We note that options are generally “exercised,” not executed. See *Figge v. Clark*, 174 N.W.2d 432, 434–35 (Iowa 1970) (“It is the general rule that the time prescribed in the agreement for the exercise of an option is of the essence and, if the option is not exercised within the time limit, all the rights of the optionee stand forfeited without notice.”). How one indicates an intent to exercise an option may be specified in the instrument granting the option. See

Steele v. Northup, 259 Iowa 443, 450, 143 N.W.2d 302, 306 (1966) (“No particular form of notice is required in the absence of a provision to the contrary in the instrument granting the option. Anything amounting to an unqualified manifestation of an optionee’s determination to accept is sufficient unless the option agreement provides otherwise.”). We look to the language of the instrument creating the option to discover the manner of the exercise. *Breen v. Mayne*, 141 Iowa 399, 403, 118 N.W. 441, 443 (1908) (“The only fixed rule regarding the manner of the exercise of an option under a contract granting it is to discover from the language of the instrument, construed in the light of competent parol testimony, the intent of the parties with reference thereto.”).

Paragraph three of Article V of Helma’s will states, “This option shall be executed within six (6) months from the date of my death or the same shall be null and void.” Paragraph five of that same article provides, “Notice of his intention to exercise the option shall be filed in writing with the Clerk of Court having jurisdiction of my estate.” Viewing this language in context, we conclude paragraph three provides the time period within which the method of election or acceptance must be made. The manner of exercise is found in paragraph five, by filing a notice of intention.

Upon our de novo review, we conclude Marion timely exercised the option by filing his “Notice of Intention to Exercise Option to Purchase Real Estate Under Terms of Will” within six months of Helma’s death. See *In re Estate of Claussen*, 482 N.W.2d 381, 384 (Iowa 1992) (finding option properly executed where optionee provided to the executors and their attorney an unequivocal notice of election to exercise the option before six months after decedent’s death,

the time at which the option would no longer have been valid); *Steele*, 259 Iowa at 450, 143 N.W.2d at 306 (finding the option became a contract of purchase when unqualified oral notice of election to perform was given). Helma's will does not state or require the real estate transaction to be consummated within six months from her date of death.

We affirm.

AFFIRMED.