

IN THE COURT OF APPEALS OF IOWA

No. 0-893 / 10-0944
Filed December 22, 2010

**IN THE MATTER OF THE
NELDA PALMER TRUST,**

CLOYCE PALMER,
Intervenor-Appellant.

Appeal from the Iowa District Court for Scott County, James E. Kelley,
Judge.

Cloyce Palmer appeals from the district court's denial of his application for
trust accounting. **AFFIRMED.**

Craig Arbuckle, Washington, for appellant.

Christine Frederick of Zamora, Taylor, Woods & Frederick, Davenport, for
appellee.

Considered by Eisenhauer, P.J., and Potterfield and Doyle, JJ.

POTTERFIELD, J.

This appeal requires us to determine whether a 2010 Scott County order denying Cloyce Palmer's request for a trust accounting should be set aside because of his claim that a 2006 Keokuk County decree quieting title to farmland was contrary to equity and the terms of his dissolution decree and was entered without sufficient notice to him. We affirm the 2010 Scott County order.

On November 4, 2003, a decree of dissolution of marriage was entered in Scott County concerning the marriage of Cloyce and Nelda Palmer. By agreement of the parties, all of their assets were transferred into a trust for the benefit of Nelda. One of the assets transferred into the trust was farmland in Keokuk County. Cloyce had inherited an undivided one-half interest from his parents; the other one-half interest of the farmland belonged to Dennis Palmer, Cloyce's brother. Cloyce and Nelda's stipulated decree specifically provided that "the farm land shall not be sold."

The statement of trust, filed December 24, 2003, in Scott County provided that upon the death of Nelda, "the remaining assets of the trust shall be distributed to Cloyce D. Palmer if living, otherwise to his heirs pursuant to his Last Will and Testament." The trustee is Christine Frederick, Nelda's attorney.

In May 2006, the co-owner of the farmland in Keokuk County, Dennis Palmer, filed a petition in equity for partition and to quiet title to the land in the district court in Keokuk County. Dennis stated in his petition that "the restriction on the transfer of the property by the other co-tenant creates a situation where the property cannot be sold nor can it be utilized to its full potential." Dennis attached to his petition a copy of Cloyce and Nelda's decree of dissolution.

Dennis Palmer served his petition on Cloyce Palmer by publication. Cloyce Palmer apparently resided in China.

On June 5, 2006, the trustee filed an application in the district court for Scott County for approval from the court to sell property, noting Dennis's petition for partition and stating it was "in the best interest of the trust to settle the partition action by selling the interest of the property to Dennis Palmer." The trustee also stated in the application that "the decree of dissolution of marriage directed that this property not be sold." The same day, the Scott County court entered an uncontested order approving sale of the property "in settlement of the petition to partition, which was filed by Dennis Palmer in Keokuk County, Iowa."

On September 13, 2006, the district court in Keokuk County entered a decree quieting title and granting partition stating that the provision forbidding sale of the land in the Palmers' decree of dissolution "unfairly and unjustly affects [Dennis's] ownership of the property." The court noted in its decision that Cloyce had been served notice of the petition by publication and had failed to appear. The trustee's report filed in Scott County on December 21, 2006, stated that the interest in the farmland had been sold "as settlement of a partition action filed by the co-owner."

Three years later, on November 9, 2009, Cloyce filed an application for trust accounting in the district court for Scott County, stating, "There is reason to believe . . . the Trustee has failed, refused and neglected to protect, preserve and prevent [the] farmland from being sold, acquired or otherwise removed from the trust's control, without notice and to the detriment of the beneficiaries." The Scott County district court denied Cloyce's application, finding that "since Cloyce

D. Palmer had apparently not provided the trustee with his address, and the annual reports have been filed and approved by this court, the application for an accounting should be and hereby is DENIED.”

Cloyce now appeals, arguing: (1) notice of the proceedings to authorize sale of the farmland did not comply with due process; (2) the sale of the farmland contrary to the terms of the decree of dissolution constituted a breach of fiduciary duty by the trustee; and (3) the sale of the farmland contrary to the terms of the decree of dissolution was contrary to equity, justice, and basic fairness.

Upon our de novo review of the record, we find the district court properly denied Cloyce’s application for trust accounting. See Iowa R. App. P. 6.907. Cloyce’s complaint involves the sale of land in 2006. The report of the trustee filed December 21, 2006, stated that the half interest in the farmland in Keokuk County “was sold as settlement of a partition action filed by the co-owner. The trust will receive \$72,682.02 on March 1, 2007, March 1, 2008, and March 1, 2009, from the sale of the interest in the farm.” Thus, an accounting was already made regarding the status of the farmland, as requested by Cloyce. This court does not see any benefit in requiring the trustee to file a duplicative accounting.

AFFIRMED.