

**IN THE COURT OF APPEALS OF IOWA**

No. 1-1004 / 11-0935  
Filed August 8, 2012

**IN THE MATTER OF THE ESTATE  
OF LOIS L. HORD, Deceased.**

**ANNE T. WALSH, KATHRYN TRABERT,  
GARY R. SHUCK, DONALD C. SHUCK,  
WILLIS E. SHUCK and JOHN DALY,**  
Petitioners-Appellants.

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Appeal from the Iowa District Court for Monona County, James D. Scott,  
Judge.

The remainder beneficiaries of the Carl R. Hord Trust appeal from the  
district court ruling finding they had conveyed their interests in the trust real  
estate to Lois Hord. **REVERSED AND REMANDED.**

Christine B. Long of Bradshaw, Fowler, Proctor & Fairgrave, P.C., and  
Lynn M. Gaumer of Duncan, Green, Brown & Langeness, P.C., Des Moines, for  
appellants.

Patrick L. Sealey, Joel D. Vos, and Allyson C. Dirksen of Heidman Law  
Firm, Sioux City, for appellees.

William Trabert, St. Charles, appellee pro se.

Michael P. Jensen, Onawa, for appellee estate of Lois L. Hord.

Heard by Danilson, P.J., Bower, J., and Miller, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

**BOWER, J.**

The remainder beneficiaries of the Carl R. Hord Trust appeal from the district court ruling concluding they had conveyed their interests in the trust real estate to Lois Hord. They contend the spendthrift clause in Carl Hord's will prohibited any transfer or assignment of their individual shares prior to the distribution of property by the trustees. They further argue the transfers of their interests to Lois were invalid because they had contingent remainder rights in the trust property that could not be conveyed. Finally, they allege the after-acquired-title doctrine is inapplicable. Upon our review, we conclude the spendthrift clause in Carl Hord's will prohibited any transfer or assignment by the remainder beneficiaries of their right to future payment from the trust; therefore the transfers were invalid under Iowa Code section 633A.2302 (2009). Accordingly, we reverse the decision of the district court and remand with directions.<sup>1</sup>

**I. Background Facts and Proceedings.**

Carl and Lois Hord were husband and wife. They owned approximately 210 acres of farmland in Monona County as tenants in common. They had no children. In 1980 Carl executed his last will and testament, which created a trust, the sole property of which was Carl's undivided one-half interest in the farmland. Carl's will left a life estate in the farmland to Lois and a contingent remainder divided between the couple's niece and nephews.

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<sup>1</sup> We filed our decision in this appeal on June 27, 2012. The appellants subsequently filed a petition for rehearing, requesting in part that we review and modify the portion of our decision regarding reimbursement of inheritance tax. We granted the petition for rehearing. Our June 27 decision is therefore vacated and this decision replaces it, omitting the specific amount of reimbursement for inheritance tax, which can be determined by the district court on remand.

Carl died on June 18, 1992, and his will was admitted to probate. The will provides in pertinent part:

I bequeath all of the residue of my estate, not effectively disposed of by the previous provisions of this Will, to my wife, LOIS L. HORD and LARRY WAUGH, as Trustees of the "CARL R. HORD TRUST," which property shall be retained, invested, managed, and distributed by them as follows:

A. DURING THE LIFE OF MY WIFE:

- (1) My Trustees shall distribute to her, at least quarter-annually, the net income from the trust.
- (2) My Trustees may also distribute to her, at convenient intervals, such sums of principal as they shall determine necessary or appropriate to keep her in the manner to which she has become accustomed, having due regard for funds available to her from other sources. LOIS L. HORD shall not participate in any decisions relating to discretionary distributions or allocations between principal and income.

B. UPON THE DEATH OF MY WIFE, or upon distribution from probate, if she has predeceased me, this trust shall be administered and distributed as follows:

- (1) The trust assets shall be divided into six (6) equal shares and one (1) such share distributed to each of the following persons, namely, MARY ANN TRABERT, GARY R. SHUCK, DONALD C. SHUCK, WILLIS E. SHUCK, EDWARD SORENSEN, and JOHN DALY. Distributions under this paragraph shall be made per stirpes, subject only to the further provisions of this Will.
- (2) No interest, under this Article, shall be transferable, assignable, or become subject to any encumbrances by any beneficiary, nor shall such interest be subject to the claims of any creditors of any beneficiary prior to the actual distribution by the Trustees to the beneficiary.

The will nominated Lois and Larry Waugh, a longtime friend of the Hords and tenant on their farm since 1975, to serve as trustees.

Lois did not like the limitations the trust placed on her and was concerned for her financial security. At her behest, the estate's attorney sent letters to each

of the remainder beneficiaries of the trust, informing them that the present value of their interest was \$12,471.16 and that Lois had paid the \$1,247.12 inheritance tax due from each of them. The letter then stated:

Lois advises me that she has talked with all of you at one time or another about the possibility of each of you relinquishing your interest in the farm ground which might constitute the Carl R. Hord Estate Trust. I anticipate that at the close of the estate that we will contact you and request that you deed all interest you have in real estate or in the trust back to Lois, if this is agreeable to you. In that event, Lois will not be expecting reimbursement of the inheritance tax she paid on April 29, 1993.

The letter did not inform the beneficiaries that they had the option of deferring payment of the inheritance tax until the time of Lois's death.

None of the remainder beneficiaries consulted an attorney, despite advice from the estate's attorney to do so. In addition, none of the beneficiaries received a copy of or read Carl's will. Their understanding as to what had been inherited varied, but each believed they had inherited something of value. Although the only promise Lois made in exchange for the assignment of interest in the trust was the payment of the inheritance tax, five of the six remainder beneficiaries executed quitclaim deeds to Lois, which she recorded. Lois then disregarded the trust and exercised personal control over the farmland.

Waugh, co-trustee of the estate, had no knowledge of Lois's correspondence with the remainder beneficiaries or their relinquishment of interest in the trust. Lois never discussed the assignments with him. The only duty Waugh performed was to petition for relief from the filing of intermediate reports, which was granted. He never read the terms of the trust contained in Carl's will.

Lois died in 2009 and her will, executed in 2001, was admitted to probate on September 11, 2009. Lois bequeathed all of the farmland—including the portion that had comprised five shares of the trust's assets—to Waugh.<sup>2</sup> The value of the farmland at that time was \$789,000, and her other assets totaled \$123,000. Her niece and nephews, the remainder beneficiaries under Carl's will, received relatively little from the estate.

The remainder beneficiaries obtained copies of Carl's will. They learned of the spendthrift clause in the trust, and believed their transfers to Lois were void. On September 9, 2010, they filed a petition for the construction and interpretation of the Carl R. Hord Trust.<sup>3</sup> On November 3, 2010, they filed a motion for summary judgment and, following a hearing, the court found the assignment of interest and quitclaim deeds to Lois violated the spendthrift provision. The court also held Waugh breached his fiduciary duty. However, the court overruled the summary judgment motion because a fact issue existed as to whether Waugh could use the affirmative defense of laches to prevent the cause of action.

Trial was held on March 31, 2011, and the court issued its ruling on April 21, 2011. The court concluded the petitioners' interest in the trust property was vested and the quitclaim deeds executed in 1993 were subject to the after-acquired property doctrine. Further, the court found the assignments violated the

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<sup>2</sup> Waugh paid \$117,639 in inheritance tax.

<sup>3</sup> Mary Ann Trabert preceded Lois in death, and therefore her contingent interest in the trust assets passed to her three children—Anne T. Walsh, Kathryn Trabert, and William Trabert—per stirpes. They are petitioners in this matter along with Lois's four nephews: Gary Shuck, Donald Shuck, Willis Shuck, and John Daly.

spendthrift clause of the trust and were voidable up until Lois's death; however, the right to revoke the assignments terminated upon Lois's death. Finally, the court found the defense of laches applied to the petitioners' claim alleging Waugh breached his fiduciary duties as trustee.

On May 4, 2011, the petitioners filed a motion to enlarge or amend pursuant to Iowa Rule of Civil Procedure 1.904(2). In the alternative, they sought a new trial. The petitioners argued the court erred in finding their interests were vested and not contingent, and that Waugh had not breached his fiduciary duty in contravention of its ruling on their motion for summary judgment. The court denied the petition on May 13, 2011. The petitioners filed their notice of appeal on June 13, 2011.

## **II. Standard of Review.**

Our review of proceedings in equity is de novo. *In re Estate of Serovy*, 711 N.W.2d 290, 293 (Iowa 2006). We give weight to the fact-findings of the district court, but are not bound by them. *Id.*

## **III. Preservation of Error.**

As an initial matter, Waugh alleges this appeal should be dismissed because the petitioners failed to timely file their notice of appeal. We disagree.

The district court's ruling was entered on April 21, 2011. The petitioners filed a motion pursuant to rule 1.904(2) on May 5, 2011. Although a notice of appeal must be filed within thirty days of a final judgment, a motion pursuant to rule 1.904(2) will toll the time for filing a notice of appeal until thirty days after the filing of the ruling on the motion. Iowa R. App. P. 6.101(1)(b); *Federal American*

*Int'l., Inc. v. Om Namah Shiva, Inc.*, 657 N.W.2d 481, 483 (Iowa 2003). The ruling denying the petitioners' motion was filed on May 16, 2011, and the petitioners filed their notice of appeal on June 13, 2011, within the thirty days.

Not every motion to reconsider will extend time for appeal. *Bellach v. IMT Ins. Co.*, 573 N.W.2d 903, 905 (Iowa 1998).

Motions to reconsider that are not in substance motions for new trial or rule [1.904(2)] motions will not extend the time for appeal. This court has long held that attempted appeals from orders denying motions to reconsider previous rulings raise no legal question. This is because an appeal ordinarily must be taken from the ruling in which the error is said to lie.

*Beck v. Fleener*, 376 N.W.2d 594, 596 (Iowa 1985). Waugh argues the petitioners' motion "amounted to no more than a rehash of legal issues previously raised by the proponent of the motion," and thus, failed to extend the time for filing of a notice of appeal.

In the motion, the petitioners sought enlargement and amendment of two issues: (1) whether the court erred in failing to distinguish that Mary Ann Trabert's quit claim deed and assignment were automatically revoked when she predeceased Lois and because her heirs never assigned their interest, it could not be transferred; and (2) whether they were prejudiced when the court revisited its summary judgment ruling to find their interests were vested and not contingent, and that Waugh had not breached his fiduciary duty. The motion addressed issues that could not have been brought to the court's attention prior to making its final ruling—it was not merely a rehash of previous legal arguments. We conclude the motion was proper pursuant to rule 1.904(2), and it therefore tolled the time for filing the notice of appeal. Because the petitioners filed their

notice within thirty days of the court's ruling on their motion, this appeal was timely.

#### **IV. Spendthrift Clause.**

The petitioners contend the district court erred in finding they could assign their interests prior to the distribution of property by the trustees to the beneficiaries. They argue such transfers are specifically prohibited by the trust's spendthrift clause. This clause, as set forth in Carl's will, states:

No interest, under this Article, shall be transferable, assignable, or become subject to any encumbrance by any beneficiary, nor shall such interest be subject to the claims of any creditors of any beneficiary prior to the actual distribution by the Trustees to the beneficiary.

Spendthrift clauses are valid in Iowa. *In re Bucklin's Estate*, 51 N.W.2d 412, 414 (Iowa 1952). The Iowa Trust Code recognizes spendthrift clauses:

A term of a trust providing that the interest of a beneficiary is held subject to a "spendthrift trust", or words of similar import, is sufficient to restrain both voluntary and involuntary transfer, assignment, and encumbrance of the beneficiary's interest.

Iowa Code § 633A.2302(1); see *Sawyer v. Sawyer*, 261 Iowa 112, 121, 152 N.W.2d 605, 611 (1967) (observing a spendthrift clause is established where the terms of the trust impose a valid restraint on the voluntary or involuntary transfer of a beneficiary's interest).

As further set forth in the Iowa Trust Code, a spendthrift clause provides the following protection for the trust assets:

A beneficiary shall not transfer, assign, or encumber an interest in a trust in violation of a valid spendthrift provision, and a creditor or assignee of the beneficiary of a spendthrift trust shall not reach the interest of the beneficiary or a distribution by the trustee before its receipt by the beneficiary.

Iowa Code § 633A.2302(2). As in this case, the spendthrift clause provided that “[m]ore particularly, the beneficiary cannot transfer [a] *right to future payments from the trust*, nor can the beneficiary’s creditors collect future trust payments due to the beneficiary.” Martin D. Begleiter, *In the Code We Trust—Some Trust Law for Iowa at Last*, 49 Drake L. Rev. 165, 209 (2001) (emphasis added).

There is no dispute a spendthrift clause was established in Carl’s will. The question before us is whether the remainder beneficiaries of the trust could assign their interest in the trust despite the spendthrift clause, or whether the assignment was prohibited per the terms of the spendthrift clause and invalid under Iowa law. The district court concluded the remainder beneficiaries had the ability to assign their interests in the trust. We disagree.

Although Iowa law recognizes several statutory exceptions to spendthrift provisions,<sup>4</sup> no exception applies in this case. Where Iowa law is clear on this issue, we decline to consider treatises that have not been adopted in Iowa or further exceptions to spendthrift provisions that have not been observed by our supreme court. Upon our de novo review of the facts and circumstances of this case, we conclude the spendthrift clause in Carl’s will clearly and unequivocally prohibited any assignment or transfer by the remainder beneficiaries of their right

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<sup>4</sup> Iowa Code section 633A.2302(3) sets forth two narrow exceptions to spendthrift protection, widely recognized at common law, that allow the interest of a beneficiary in a spendthrift trust to be used to satisfy tax claims of the United States or necessities provided to or for the beneficiary. In addition, section 633A.2303 provides that spendthrift clauses created with the settlor as beneficiary in order to insulate the settlor against claims by creditors are invalid.

to future payment from the trust; therefore, purported transfers were invalid under Iowa Code section 633A.2302.<sup>5</sup>

Accordingly, we reverse the ruling of the district court. We remand with instructions to the court to enter a ruling directing distribution of the assets of the Carl R. Hord trust pursuant to Carl's will. The court should further enter a ruling directing reimbursement to Larry Waugh for his payment of inheritance tax, plus interest.

#### **V. Additional Claims.**

In light of our conclusion as to the spendthrift clause issue, we do not reach the remaining issues raised by the petitioners on appeal.

However, Waugh advances two alternative arguments for affirming the district court's ruling. He contends the district court erred in ruling the doctrine of laches only applied to the petitioners' claim he breached his fiduciary duty as trustee. He argues the doctrine should also have barred the petitioners' challenge to the validity of the quitclaim deed assignments. We disagree. The

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<sup>5</sup> In reaching this conclusion, we further observe the testator's intent is the polestar. *In re Estate of Anderson*, 359 N.W.2d 479, 480 (Iowa 1984). This intent is determined by the language used in the will, the scheme of distribution, the circumstances surrounding the will's execution, and the existing facts. *In re Estate of Thompson*, 511 N.W.2d 374, 377 (Iowa 1994). The question is not what the testator meant to say but what the testator meant by what he or she did say. *In re Estate of Rogers*, 473 N.W.2d 36, 39 (Iowa 1991). We consider the entire will and strive to give each part meaning and effect. *Id.*

Here, the trust created in Carl's will provided that during Lois's life, she was entitled to all the net income of the trust and principal if necessary to support her in the manner to which she had become accustomed. The will specifically prohibited Lois from participating in "any decisions" relating to discretionary distributions of principal. Upon Lois's death, the will devised the trust assets to the six named beneficiaries, with the specific direction that no interest be transferable prior to actual distribution by the trustees. It is clear Carl intended to restrict the descent of his property to the remainder beneficiaries—and their descendants—named in his will.

district court found the seventeen years that had transpired between the alleged breach of his fiduciary duties and the filing of the cause of action prejudiced Waugh's ability to construct a defense. However, this was not the case with the claim regarding the petitioners' challenge to the conveyance of the quitclaim deeds as only one year had passed between the time their claim accrued when Lois died and the time the petition was filed.

Waugh also contends the district court erred in finding the statute of limitations did not apply to bar the petitioners' cause of action because their claim was brought more than ten years after the conveyance of real estate in violation of Iowa Code section 614.17A. We disagree. While the quitclaim deeds were executed in 1993, the petitioners' cause of action did not accrue until Lois died in 2009. The filing of their claim in September 2010 was within the ten-year statute of limitations provided in the Iowa Code.

## **VI. Conclusion.**

We conclude the spendthrift clause in Carl Hord's will prohibited any transfer or assignment by the remainder beneficiaries of their right to future payment from the trust; therefore, purported transfers were invalid under Iowa Code section 633A.2302. Accordingly, we reverse the decision of the district court and remand with directions.

## **REVERSED AND REMANDED.**

Danilson, J., concurs; Miller, S.J., concurs specially

**MILLER, S.J.** (concur specially)

I concur in the result.