

IN THE COURT OF APPEALS OF IOWA

No. 1-218 / 10-1475
Filed May 25, 2011

**IN THE MATTER OF THE ESTATE
OF MAX WILLHOIT, Deceased.**

TODD WILLHOIT,
Intervenor-Appellant.

Appeal from the Iowa District Court for Jefferson County, Michael R. Mullins, Judge.

Todd Willhoit appeals the district court's ruling denying his application for specific performance of a real estate contract. **AFFIRMED.**

Paul A. Miller of Miller Law Office, Fairfield, for appellant.

J. Terrence Deneffe of Kiple, Deneffe, Beaver, Gardner & Zingg, L.L.P., Ottumwa, for appellee Vera B. Willhoit.

Richard J. Gaumer of Gaumer, Emanuel, Carpenter & Goldsmith, P.C., Ottumwa, for appellee Janice Millhouser.

Heard by Eisenhauer, P.J., and Potterfield and Tabor, JJ.

POTTERFIELD, J.**I. Background Facts and Proceedings.**

Max Willhoit died December 11, 2008, and was survived by his wife, Vera Willhoit. Max's will was admitted to probate, and Vera was appointed executor. Max had two children, Larry Willhoit and Janice Millhouser. Larry had died in 2004 and was survived by his two children, Todd Willhoit and Diane Siebert. As a result of the administration of Larry's estate, the Larry Willhoit Family Trust was created with Todd and Diane as co-trustees.

On May 14, 2009, Vera executed an agreement creating the Vera B. Willhoit Irrevocable Trust, with Vera and Craig Foss, attorney for Max's estate, as co-trustees. On May 21, 2009, Vera executed a quitclaim deed transferring to the Vera B. Willhoit Irrevocable Trust her interest in real estate that is the subject of dispute on appeal.

On January 22, 2010, Todd filed an application for hearing pursuant to Iowa Code section 633.97 (2009). Todd's application stated he had made an offer on behalf of the Larry Willhoit Family Trust to purchase real estate, which had been approved and signed by the executor of Max's estate (Vera). His application further stated the attorney for the estate refused to honor the offer and acceptance, and he therefore requested specific performance pursuant to Iowa Code section 633.97. The real estate at issue was owned eighty percent by the Max Willhoit Estate and twenty percent by the Vera B. Willhoit Irrevocable Trust.

After a hearing on the matter, the district court found that the twenty percent interest of the Vera B. Willhoit Irrevocable Trust could not be transferred

without the signature of both trustees, Foss and Vera. Because Foss did not sign the document, the court found it could not enforce the contract by specific performance as it related to the twenty percent interest. The court further found that Todd “did not plead that [he] was trying to enforce any rights [he] might have to an eighty percent interest in the [land] . . . and made no such assertion during the trial of this case.” The court nevertheless addressed the issue and exercised its discretion in concluding Todd’s action for specific performance in regards to the eighty percent interest should not be granted given numerous irregularities in the preparation and execution of the offer and acceptance. Todd appeals.

II. Scope of Review.

Our review of this action in equity is de novo. *In re Estate of Claussen*, 482 N.W.2d 381, 383 (Iowa 1992).

III. Merits.

Todd advances five arguments on appeal, none of which contest the district court’s finding that Vera was unable to convey the twenty percent interest of the Vera B. Willhoit Irrevocable Trust without the signature of Foss.¹ Thus, we affirm that part of the district court’s ruling.

Todd argues on appeal the district court erred in declining to enforce the purported contract selling him the eighty percent interest in the land. We conclude the district court was within its discretion when it ruled the circumstances surrounding the preparation and execution of the contract created issues that weighed against specific performance.

¹ Though Todd raised this issue in his reply brief, we decline to address it on appeal. See *Young v. Gregg*, 480 N.W.2d 75, 78 (Iowa 1992) (“[A]n issue cannot be asserted for the first time in a reply brief.”).

The decision to grant specific performance is within the court's sound discretion and is not to be granted as a matter of right. *Breitbach v. Christenson*, 541 N.W.2d 840, 843 (Iowa 1995). "It is to be granted only in extraordinary, unusual cases in which irreparable harm will result in its absence, not as a matter of grace." *Id.*

In determining whether to grant a request for specific performance, we must examine the particular facts of the situation and will generally grant the request when it would subserve the ends of justice and deny to do so where it would produce a hardship or injustice on either party.

Id.

The district court noted irregularities in these proceedings, including: the contract identified the seller as Vera Willhoit, although Vera did not own the property; Todd attempted to obtain Vera's signature without the advice of her attorney and co-trustee; Todd added a sixth page to the contract for signatures of Diane as a co-trustee of the Larry Willhoit Family Trust and Vera as executor of the Max Willhoit Estate and as co-trustee of the Vera Willhoit Irrevocable Trust; the added signature page did not include dates on which the signatures were made (the only dates were those printed by fax machines as the signature page was transmitted among the signers);² and Todd filed his action for specific performance in his name and not on behalf of the Larry Willhoit Family Trust, although Todd is not a party to the contract he seeks to enforce.

Upon our de novo review of the record, we conclude the district court did not abuse its discretion in denying specific performance of the contract. This is

² The parties agree that Vera was not competent as of the date of the trial in July 2010; the dates of facsimile transfers shown on the added page six, which includes Vera's undated signatures as executor and co-trustee, are November and December 2009.

not an extraordinary case in which irreparable harm would be caused to the Larry Willhoit Family Trust or to the Vera Willhoit Irrevocable Trust if the purported contract is not enforced. *See id.*

We determine Todd's other arguments on appeal are collateral and unimportant to the determination of the case and therefore decline to consider them.

We also decline to award Todd attorney fees, as requested on appeal. Because he cites no authority authorizing an award of attorney fees, we deem the issue waived. *See Iowa R. App. P. 6.903(2)(g)(3).*

AFFIRMED.