

**IN THE COURT OF APPEALS OF IOWA**

No. 2-148 / 11-1376  
Filed March 28, 2012

**DAVID GRANZOW,**  
Plaintiff-Appellant,

**vs.**

**STANLEY K. DOSER and CHERYL L. DOSER,**  
Defendants-Appellees.

---

Appeal from the Iowa District Court for Story County, Steven J. Oeth,  
Judge.

David Granzow appeals a district court's order denying his request for  
specific performance. **AFFIRMED.**

Seth R. Delutri and Todd A. Strother of Bradshaw, Fowler, Proctor &  
Fairgrave, P.C., Des Moines, for appellant.

John C. Conger of Wetsch, Abbott & Osborn, P.L.C., Des Moines, for  
appellees.

Considered by Vogel, P.J., and Tabor and Bower, JJ.

**VOGEL, P.J.**

David Granzow appeals a district court's order denying his request for specific performance of an "Offer to Sell" real estate. We affirm the district court's denial as the underlying real estate was held in the Naomi Doser estate and the document was not signed by the estate's executor, Patricia Bjortomt.

**I. Background Facts and Proceedings**

This appeal concerns agricultural property held in the estate of Naomi Doser in Story County, Iowa. The district court found, and we agree with, the following facts:

Prior to the death of Naomi Doser on February 13, 2009, the property was owned by Naomi Doser (50%), Stanley K. Doser (25%), and Patricia Bjortomt (25%). Stanley and Patricia are the children of Naomi. For the 20 years preceding Naomi's death, David Granzow farmed the property pursuant to cash rental agreements. . . . Upon her death, Naomi's 50% interest in the property passed equally to her children. At that point Stanley and Patricia each owned an undivided one-half interest in the property.

In February 2009 after Naomi's death, Patricia and Stanley agreed to sell the property. Stanley and Patricia agreed that David Granzow was considered their best prospect as a purchaser of the property. Patricia Bjortomt, who was the executor of Naomi's estate, approached David Granzow about the purchase. Patricia Bjortomt then left Iowa and headed back home to Arizona because she had a major surgery scheduled. She asked Stanley Doser, who lived in Iowa, to negotiate with David Granzow for the sale of the property. Patricia Bjortomt advised David Granzow to deal with Stanley Doser for the purchase of the property.

Between March 26, 2009, when Patricia Bjortomt left and April 23, 2009, Stanley Doser had a series of phone calls and meetings with David Granzow. Specifically, on March 28, 2009, there was a meeting at a shed on David Granzow's property. No agreement was reached at this meeting. The next meeting was by telephone. David Granzow testified that he thought an agreement was reached for a sale at \$5,500 per acre. Stanley Doser testified that a price of \$5,511 was discussed but the conversation ended with Stanley Doser telling David Granzow he would talk to Patricia Bjortomt and get back to him.

According to Stanley Doser, when he called Patricia Bjortomt, she said that she would accept \$5,525 per acre. It was at that point that Stanley Doser prepared the document which was received as Exhibit 1, which was signed on April 23, 2009 by David Granzow and Stanley Doser.

The document, which was entitled "Offer to Sell," referred to the property as "the farmland of the Naomi Doser estate," and contained, among other things, a description of the land, and stated an agreed upon price of \$5,525 per acre. The document contained three signature lines and was signed by David Granzow and Stanley Doser on April 23, 2009. Granzow and Doser then shook hands. The next day, Doser mailed the original document to Patricia Bjortomt, the executor of the estate. Bjortomt received the document on April 28, 2009, but never signed it. Shortly thereafter, Bjortomt signed a purchase agreement for the sale of the property with a third party, Brick House Investments, L.L.C.

Granzow brought an action in probate, against the executor of the estate in an attempt to enforce the April 23, 2009 document. The case was dismissed on May 21, 2010, with the district court correctly concluding that Bjortomt, as executor, had not agreed to and signed the proposed offer. Granzow then filed this action on July 1, 2010, requesting specific performance as to Doser's "undivided one-half interest" in the property. A one-day trial to the bench was held on July 12, 2011; the district court denied Granzow's request for specific performance. Granzow appeals.

## **II. Standard of Review**

Our review of cases in equity is de novo. Iowa R. App. P. 6.907. Although our review is de novo, we are cognizant of the role the district court plays in assessing the credibility of witnesses. See *Perkins v. Madison Cnty.*

*Livestock & Fair Ass'n*, 613 N.W.2d 264, 267 (Iowa 2000) (noting that our appellate courts are “especially deferential to the district court’s assessment of witness credibility”).

### **III. Specific Performance**

Granzow asserts the district court erred in denying specific performance of the April 23 document because Doser represented he had authority to convey title to the entire property. Doser replies that there was no contract on which to base specific performance because all known vendors did not sign the document as intended by the parties.

The property at issue in the April 23 document is “the farmland of the Naomi Doser estate.” Under Naomi Doser’s last will and testament, Bjortomt was given express authority, in her capacity as executor, to sell assets of the estate—including real estate—without court approval. The April 23 document was signed during the administration of the estate. Doser had no authority to authorize entering into an agreement to sell the land held in the estate as an executor cannot bind the estate by virtue of delegating a power to settle a controversy concerning property in the estate in the absence of a court order. *See Williamson v. Robinson*, 134 Iowa 345, 349, 111 N.W. 1012, 1013 (1907) (“Even if the executor had power, in the absence of an order of court granting authority, to settle a matter in controversy respecting the property of the estate in his charge, still he could not bind the estate by any delegation of that power.”). As such, only Bjortomt, as the executor of the estate and absent a court order, could authorize the sale of the farmland held in the Naomi Doser estate. Without Bjortomt’s signature, sale of the property from the estate could not be effectuated

and the estate cannot be bound by virtue of Doser's signature on the April 23 document.

Granzow also argues that he is entitled to specific performance as to Doser's "one-half interest" in the property. First, Doser only owned an undivided one-fourth interest in the real estate. Next, and importantly, as the district court found, the proposed contract was for the sale of the *whole* property, and "everyone knew Stanley Doser did not have the 'capacity to give the whole' without Patricia's signature." See *Jasperson v. Bohnert*, 243 Iowa 1275, 1277, 55 N.W.2d 177, 178 (1952) ("[I]f, at the time the contract was entered into, the purchaser did know the vendor would only be able to convey a partial interest, the courts generally hold the purchaser cannot compel specific performance or conveyance of the vendor's partial interest with an abatement in the agreed price.").

Moreover, although Doser owned an interest in the real estate, it was an undivided interest.

[W]hen a person dies, the title to the person's property, real and personal passes to the person to whom it is devised by the person's last will . . . but all of the property shall be subject to the possession of the personal representative as provided in section 633.351 and to the control of the court for the purposes of administration, sale, or other disposition under the provisions of law.

Iowa Code § 633.350 (2009); see also *Freedom Fin. Bank v. Estate of Boesen*, 805 N.W.2d 802, 814 (Iowa 2011) (explaining that the primary purpose of Iowa Code section 633.350 "is to articulate the rule of law that title to the decedent's real and personal property passes immediately to the devisee or intestate heir, *subject to defeasance by the personal representative for purposes of*

*administration, sale, or other disposition* under applicable provisions of law” (emphasis added)). Short of an action for partition in the estate, the sale of the whole, as described in the offer to sell, could not occur without the signature of all title holders, including that of the executor of the estate.

We therefore agree with the district court’s denial of specific performance.<sup>1</sup>

**AFFIRMED.**

---

<sup>1</sup> Doser raises two additional issues on appeal—issue preclusion and the statute of frauds. As the district court did not rule on these issues and Doser did not file a motion pursuant to Iowa Rule of Civil Procedure 1.904, urging the district court to expand its ruling, error was not preserved and we decline to consider them on appellate review. See *Meier v. Senecaut*, 641 N.W.2d 532, 539 (recognizing that what is now a rule 1.904 motion “is necessary to preserve error when the district court fails to resolve an issue, claim, or other legal theory properly submitted for adjudication”).