

**IN THE COURT OF APPEALS OF IOWA**

No. 6-678 / 05-1534  
Filed September 21, 2006

**IN THE MATTER OF THE ESTATE OF  
HESTER MAY LEWIS ANTON, Deceased,**

**GRETCHEN COY,**  
Appellant,

**vs.**

**NANCY R. EZARSKI, Fiduciary of the Estate  
of HESTER MARY LEWIS ANTON,**  
Appellee.

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Appeal from the Iowa District Court for Story County, Timothy J. Finn,  
Judge.

Gretchen Coy appeals from the district court order denying her claim  
against the estate of Hester Mary Lewis Anton. **AFFIRMED.**

Michael Houchins of Houchins & Borth, Spencer, for appellant.

Stephen Howell of Newbrough, Johnston, Brewer, Maddux & Howell,  
L.L.P., Ames, for appellee.

Considered by Vogel, P.J., and Miller and Eisenhauer, JJ.

**EISENHAUER, J.**

Gretchen Coy appeals from the district court order denying her claim against the estate of Hester Mary Lewis Anton. She contends the district court erred in concluding the duplex that had been specifically devised to her in Anton's will was adeemed. Because this case was brought and tried in equity, our review is de novo. Iowa R. App. P. 6.4.

Hester Mary Lewis Anton died on December 2, 2003 at the age of ninety-five. Her last will and testament provides in pertinent part:

To my husband, Herbert H. Anton, if he shall survive me by a period of sixty (60) days, I give, devise and bequeath the following:

A. All of my right, title and interest in and to the duplex property located at 2322-2324 Van Buren, Ames, Iowa, and legally described as: Lot 7 (7), Allenvue Sixth Addition to Ames, Iowa.

In the event that my said husband shall not so survive me, then I give and devise this property one-half to my daughter, Nancy R. Ezarski, and my son, Robert A. Lewis, and one-half to my step-daughter, Gretchen Coy.

Anton was preceded in death by her husband.

Anton had lived in a nursing home since being injured in a vehicle collision in 1986. At the time she entered the nursing home, Anton had nearly one million dollars in assets, including a trust provided by her deceased husband. These assets were used over the years to pay the expense of living in the nursing home.

Anton granted a power of attorney in November 1986 to her daughter, Ezarski. The power of attorney stated it was to be effective "until my death and shall not be affected by any mental or physical disability which I may hereafter suffer." Acting under the power of attorney, Ezarski sold Anton's assets to pay

Anton's bills. This included the sale of Anton's home in 1988. The duplex at issue here was to be sold as a last resort because it produced income.

Approximately four months prior to Anton's death, additional funds were needed to pay a number of Anton's bills, including payments owed to the nursing home. Anton's remaining assets were the duplex and trust provided by her husband. Ezarski listed the duplex for sale in order to pay the bills. However, Coy's son called Ezarski, informed her of the terms of Anton's will, and told her she could not sell the duplex. Ezarski then took the duplex off the market and contacted an attorney, who reviewed Anton's will and the testamentary trust that supported Anton. He issued the following in a letter to Ezarski:

The two relevant pieces of information to this issue are that (1) your father's trust provides that your mother has a life income interest and also that the trustee has the absolute discretion to distribute the principle of the trust to your mother for her health, well-being, and maintenance; (2) the duplex currently requires approximately \$5,000 worth of repairs to the roof to replace worn shingles.

In light of all this information, it is my legal opinion that you are fully within your rights as attorney-in-fact for your mother to sell the duplex and to use the proceeds to pay for her care. It is further my opinion that Ms. Coy has no enforceable legal rights with respect to the duplex for as long as your mother is living. Finally, it is my opinion that your past acts of liquidating all of your mother's other assets (all or most of which would have gone to you upon her death) clearly shows that you have not been acting in any inappropriate manner as your mother's attorney-in-fact.

Ezarski then contacted the trust officer at the bank acting as the trustee for Anton's trust to inquire about obtaining a loan from the trust. She was informed that the bank preferred that all of Anton's other assets be sold prior to invading the principle of the trust. Because the income from the trust and the duplex were insufficient to pay Anton's bills, Ezarski decided to sell the duplex.

The duplex was sold for \$145,000.00. After the costs of the sale were deducted, Anton received \$133,263.16 from the sale. After payment of Anton's bills, \$104,317.38 remained. At the time of her death, Anton's checking account had a balance of \$116,572.84.

Coy filed this action in probate seeking \$72,625.00 for her one-half interest in the duplex, which she claimed was sold when other assets in the estate were available. The claim was disallowed by the executor. A hearing was held on August 10, 2005. On August 25, 2005, the district court filed its order denying Coy's claim after finding the property had been adeemed.

An ademption is an extinction of property, and when a specific devise is adeemed, no other property can take its place. *In re Estate of Eickholt*, 365 N.W.2d 44, 47 (Iowa Ct. App. 1985). The intent of the testator is an important element in an ademption. *Id.*

Where the testator is competent and disposes of the subject of the gift, the gift is adeemed; where the testator is incompetent and the subject of the gift is sold by a guardian with court approval, the gift is only adeemed to the extent the proceeds are used for care and maintenance of the ward. The only question of intention involved is the opportunity of the testator to change the will. This opportunity is denied the incompetent testator. No question of his intentions other than expressed in the will is involved. Where . . . the testator is incompetent and under guardianship, a sale by the guardian does not work an ademption so far as the proceeds are traceable.

*In re Estate of Bierstedt*, 254 Iowa 772, 775, 119 N.W.2d 234, 236 (1963).

Although the duplex was intentionally disposed of and not accidentally destroyed, Coy asserts the sale was not an ademption because Anton was not mentally competent at the time of the sale. She claims she is entitled to one-half of the remaining proceeds from the sale of the duplex.

We conclude the property was adeemed. Ezarski properly had power of attorney, which was not affected by any mental disability suffered by Anton. Over a period of approximately fifteen years and with Anton's agreement, Ezarski sold Anton's assets to pay her bills. Prior to Anton's death, it became necessary to sell the duplex to pay mounting debt. Upon being informed of the terms of Anton's will, Ezarski endeavored to obtain other means to pay the debt. She could not. Ezarski then disposed of the duplex in the same manner in which Anton's other assets had been sold over the years to allow her to remain in the nursing home. As the district court found, "That the duplex was sold was clearly a part of the plan and intention of the testator which had been implemented over several years. Its sale was not a matter of accident." We adopt this finding as our own. Because the property was adeemed, the district court order denying Coy's claim is affirmed.

**AFFIRMED.**