IN THE COURT OF APPEALS OF IOWA

No. 7-616 / 07-0082
Filed September 19, 2007

**IN THE MATTER OF THE ESTATE OF
LORRAINE K. WILSON, Deceased,**

JOHN P. WILSON,
Appellant.

Appeal from the Iowa District Court for Dubuque County, Monica L. Ackley, Judge.

Plaintiff challenges district court order finding he waived his option to purchase stock under the terms of his mother's will. **AFFIRMED.**

Webb L. Wassmer of Simmons Perrine P.L.C., Cedar Rapids, for appellant.

Mark J. Willging and John F. Hodges of Fuerste, Carew, Coyle, Juergens & Sudmeier, P.C., Dubuque, for appellee-executor.

Considered by Huitink, P.J., and Vogel and Eisenhauer, JJ. Baker, J., takes no part.

HUITINK, P.J.

John P. Wilson challenges a district court order finding he waived his option to purchase stock under the terms of his mother's will. Because we find he forfeited his option to purchase the stock under the accelerated procedures set forth in the will, we affirm.

I. Backgrounds Facts and Prior Proceedings

Lorraine K. Wilson died on May 17, 2005. At the time of her death, Lorraine owned eight-six shares of stock in Wilson Bros. - Dubuque, Inc. The first codicil to her last will and testament gave her son, John, the option to purchase these eighty-six shares. The codicil stated:

> If at the time of my death I own any shares of Wilson Bros. – Dubuque, Inc., or any successor in interest thereto, I grant my son, JOHN, the option to purchase such shares upon the following terms and conditions. Within fifteen (15) days after the admission of my Will to probate and the appointment of my executors, the executors shall give JOHN notice of his option to purchase all, but not less than all, shares that I own at the time of my death, for the shares' fair market value. JOHN shall exercise this option to purchase such shares, if at all, by providing written notice to my executors within thirty (30) days after receipt of the executors' notice. JOHN's exercise may, however, be conditioned on the determination of a final purchase price which is acceptable to him.
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> If JOHN exercises this option to purchase the shares, he and my executors shall determine the fair market value for the shares, and if they are unable to mutually agree upon the fair market value of the shares within thirty (30) days after JOHN's exercise of the option, either party may demand an appraisal of the shares to determine the shares' fair market value as of the time of my death. The appraisal shall be performed by an independent certified public accounting firm or business valuation firm experienced in appraising automobile dealerships. The appraiser shall be selected by mutual agreement of JOHN and my executors with the cost shared one-half by each, or in the event, that they cannot agree on an acceptable appraiser, than each party may retain their own independent appraiser which shall be a certified public accounting firm or business valuation firm experienced in appraising automobile dealerships, in which case the average of the two

> appraisals shall be conclusive of the determination of the fair market value of those shares. Each party shall bear the cost of their own appraisal.
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> Within thirty (30) days after final determination of the fair market value of the shares, either by a single appraisal or by the average of two appraisals, JOHN shall notify my executors whether the final determination of the purchase price is acceptable and, if so, JOHN shall enter into a purchase agreement with my executors to purchase such shares and to close such purchase within six (6) months after the date of my death.
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> For purposes of this Paragraph, regardless of the number of shares I own, the appraiser shall not apply any discount for minority ownership or lack of marketability in determining the shares' fair market value.

Pursuant to the terms and conditions in the codicil, on July 18, 2005, the executor, Eugene J. Wilson, provided John with notice of his right to purchase the eighty-six shares of stock. On August 5, 2005, John's attorney gave the executor notice that he was exercising his right to purchase the stock, "conditioned on the determination of a final purchase price which is acceptable to him."

The executor's attorney responded one week later with a letter to John's attorney asking whether John had a proposed fair market value price for the shares. The letter also stated: "The estate intends to retain the services of a certified public accountant to assist in determining a fair market value and, to retain if it is necessary under the procedure to have an appraisal of the shares."

John did not respond to this letter. On October 25, 2005, the executor's attorney sent John another letter asking whether he still intended to exercise his option and whether he had made his own determination of the fair market value of the shares. The letter also indicated that the executor did not want to go forward with the costly appraisal if it was not necessary to do so.

John did not respond to this letter. On January 6, 2006, the executor's attorney sent John's attorney another letter, again asking whether John intended to exercise the option and whether he had made his own determination of the fair market value of the shares.

John did not respond to this letter. On February 15, 2006, the executor's attorney sent another letter to John's attorney. This letter included an October 31, 2005 balance sheet for "Wilson Bros., Inc." completed by accountants "hired by Wilson Bros., Inc." Based on the total equity listed on the balance sheet and the 215 outstanding shares of stock, the executor determined the per share value of the stock was $2476.98. Accordingly, the executor indicated the total price for John to purchase the eighty-six shares was $213,020.28. The letter went on to state:

> If John wishes to purchase the shares at this price please let us know by . . . March 3, 2006. If the estate does not have a response by that date we will file an Application with the Court requesting a finding that John Wilson has waived any rights under Mrs. Wilson's Last Will and Testament to purchase the shares.

Once again, John did not respond to the executor's letter. On March 23, 2006, the executor filed the present action asking the court to find that John had waived his rights to purchase the shares of stock. This application also noted that the administration of the estate was substantially complete, and the only significant matter left to be resolved was the resolution of this option.

Three weeks later John filed objections to the executor's March 23 application, contending the appraisal did not comply with the requirements of the codicil because: (1) the date of the accountants' valuation was not the date of his mother's death, (2) the identity of the person performing the appraisal was not

disclosed and therefore there was no proof that this person was a certified public account or a person experienced in appraising car dealerships, and (3) that the valuation contained debts attributed to himself that were also the subject of separate litigation. In an affidavit attached to his objections, John stated he had not "personally" received the January 6 letter or the February 16 letter from the executor. He also stated that he had given his prior counsel instructions to notify the executor that he still wanted to pursue his right to purchase the stock.

The court held a hearing for this matter on December 5, 2006. By the time of the hearing, John had still not taken any steps to determine a price for the shares. John's attorney told the court that John had not provided a proposed valuation because he did not have access to the financial records of the corporation. The executor's attorney responded that John had not even communicated with the executor since the August 5, 2005 letter.

The court issued a ruling finding that John had "not done as required to exercise the option, and has therefore waived his right [to exercise the option]." The court went on to state that the executor "is hereby given the ability to proceed with the closure of the estate."

On appeal, John argues:

> THE DISTRICT COURT MISCONSTRUED THE UNAMBIGUOUS TERMS OF THE CODICIL AND IMPROPERLY CONCLUDED THAT JOHN P. WILSON HAD WAIVED HIS RIGHTS.

II. Standard of Review

Our review of probate matters, subject to certain exceptions not applicable here, is de novo. Iowa Code § 633.33 (2007); *In re Estate of Thomann*, 649 N.W.2d 1, 3 (Iowa 2002).

III. Merits

"[T]he intent of the testator is the 'polestar' of our analysis when interpreting wills." *In re Estate of Hurt*, 681 N.W.2d 591, 593 (Iowa 2004). A plain reading of the codicil demonstrates that Lorraine's intent was to assure a rapid conclusion to the option process: fifteen days to give John notice of his option to purchase the shares, thirty days to provide written notice of his intention to exercise the option, and the close of the sale within six months of her death.

The record indicates that John's inattentiveness has frustrated the intent of the codicil to the point that by December 5, 2006, the date of the hearing on this matter, more than twelve months had passed since the deadline set forth in the codicil to close the sale of the shares. On numerous occasions, the executor tried to communicate with John about a fair price for the shares. John ignored each request. Eventually, the executor established a price and gave John a specific amount of time to accept. At this point, John could have rejected the option price and, pursuant to the codicil, demanded an independent appraisal from a certified public accounting firm or business valuation firm experienced in appraising automobile dealerships. Instead, he ignored the executor's letter and did nothing.[1]

By the time of the December 2006 hearing, John had still not taken any steps to secure an independent appraisal or taken any steps to calculate an agreeable price for the shares. Instead, he claimed the price offered by the executor was invalid because the executor did not employ a proper appraiser.

[1] Even if we assume, arguendo, that he did not receive the letter, he eventually learned of the option price when he received notice of the executor's application to the district court.

The district court rejected this argument and found that he had not done as required to exercise his option. John raises the same argument on appeal.

We, like the district court, find this argument meritless. The terms of the codicil are unambiguous. John had the right to demand an independent appraisal if the parties could not agree on the purchase price, but he chose not to do so. The price set forth by the executor was based on statements prepared by the corporation's accountants, not an independent appraisal generated pursuant to the codicil. An independent appraisal was not necessary because neither party had invoked their right to the independent appraisal process set forth in the codicil. Therefore, the identities of the accountants who prepared the balance sheet have no bearing on this case.

The executor did not have a duty to calculate an option price that was acceptable to John. Rather, John had a process at his disposal to challenge the executor's price and establish the "fair market value" of the shares. Because John decided not to accept the purchase price and not to invoke the independent appraisal process during the more than nine months between the time he received the price and the date of the December hearing, we find he forfeited his option to purchase the shares of stock under the accelerated process set forth in the codicil. *See Steele v. Northup*, 259 Iowa 443, 448, 143 N.W.2d 302, 305 (1966) ("The general rule is that the time prescribed for exercise of an option is of the essence, and if the option is not exercised within the time limited all rights of the optionee stand forfeited without notice.").

Our resolution of this issue controls all issues urged on appeal.

AFFIRMED.