

IN THE COURT OF APPEALS OF IOWA

No. 8-075 / 07-0819

Filed May 14, 2008

**IN THE MATTER OF THE ESTATE OF
KATHLEEN M. CROSS, Deceased,**

KATHLEEN S. CROSS,
Plaintiff-Appellant/Cross-Appellee,

vs.

RICHARD S. CROSS,
Defendant-Appellee/Cross-Appellant,

**IOWA STATE BANK AND TRUST
COMPANY, Executor of the Estate
Of KATHLEEN M. CROSS, SHANE
CROSS, CAITLIN CROSS, MELANIE
CROSS, FIRST UNITED METHODIST
CHURCH, IOWA CITY, IOWA, ISAAK
WALTON LEAGUE, JOHNSON
COUNTY, IOWA, SALVATION ARMY,
IOWA CITY, IOWA, and HOSPICE OF
IOWA CITY, INC.,**
Defendants.

Appeal from the Iowa District Court for Johnson County, Mitchell E.
Turner, Judge.

Kathleen S. Cross appeals and Richard Cross cross-appeals from the trial court's ruling resolving disputed issues in the administration of the Estate of Kathleen M. Cross. **AFFIRMED.**

Webb L. Wassmer and Paul P. Morf of Simmons Perrine P.L.C., Cedar Rapids, for appellant/cross-appellee.

Thomas D. Hobart of Meardon, Sueppel & Downer P.L.C., Iowa City, for appellee/cross-appellant.

Phillip Leff of Leff Law Firm, L.L.P., Iowa City, and Bruce Walker of Phelan, Tucker, Mullen, Walker, Tucker & Gelman, L.L.P., Iowa City, for Iowa State Bank and Trust Company.

Considered by Huitink, P.J., and Zimmer and Miller, JJ.

HUITINK, P.J.

Kathleen S. Cross appeals and Richard Cross cross-appeals from the trial court's ruling resolving disputed issues in the administration of the Estate of Kathleen M. Cross. We affirm.

I. Background Facts and Proceedings

Kathleen M. Cross died on January 4, 2004. She was predeceased by her husband, Stanley Cross, in 2002. Kathleen's November 5, 1999 will and February 5, 2001 codicil were admitted to probate in Johnson County on February 18, 2004. Iowa State Bank and Trust Company was appointed executor of her estate in lieu of the nominated executor, Kathleen S. Cross (Kathy).

Article II of Kathleen's will gave her personal property not otherwise disposed of to her children, Kathy and Richard Cross (Rick), in equal shares. Article XV granted Rick an option to purchase Kathleen's home on Summit Street in Iowa City, subject to specified notice, appraisal, and time constraints.

On March 26, 2004, Rick filed the required notice and request for appraisal with the clerk of court. The executor obtained an appraisal, indicating the value of the Summit Street house was \$295,000 as of May 1, 2004. For reasons referred to later, transfer of the property in exchange for the payment of the option price was not accomplished within the time prescribed in Kathleen's will.

On July 9, 2004, Kathy filed a multi-count petition contesting Kathleen's February 5, 2001 codicil. Kathy also requested injunctive relief prohibiting the sale of any estate assets and allowing her to obtain her own appraisal of the

Summit Street property. On October 5, 2004, the trial court denied Kathy's request for temporary injunctive relief but, nevertheless, entered an order requiring notice and prior court approval of any dispositions of estate assets. On October 15, 2004, the executor filed a combined application for instructions concerning the option price of the Summit Street property and clarification of the court's October 5, 2004 order requiring notice and prior court approval of asset dispositions. At the March 29, 2005 hearing on the executor's combined application, the court also considered Kathy's challenge to the \$295,000 appraised value of the Summit Street property. The court's resulting ruling filed on May 4, 2005, provides:

Thus, if my function here was to select a reasonable market price based on the evidence, I might well place a value on the property somewhere between the two appraisals. However, under the terms of the will, that is not my function. Because [Kathy] has failed to show fraud or bad faith, I must accept the value given by the appraiser selected by the executor.

Based on the foregoing, this Court now **ORDERS**:

The request to delay ruling is denied.

[Kathy's] challenge to the [appraisal obtained by the executor] is overruled. The executor may carry through with the transfer of that property consistent with the terms of the Article XV of the will of the decedent.

Judge Sosalla's ruling is clarified to provide that any property that the will expressly allows the executor to dispose of or distribute that is not a subject of the challenged codicil may be disposed of and/or distributed as provided in the will.

Kathy did not challenge the executor's asserted power of sale nor did she appeal from the trial court's ruling.

The contest concerning Kathleen's codicil was tried to a jury in September 2006. The jury determined Kathleen lacked the testamentary capacity to make a codicil to her 1999 will, and the court ordered the February 2001 codicil set aside.

In addition to the foregoing, Kathy filed a series of motions and applications raising several issues, including Rick's liability for the unpaid balance of a \$61,000 promissory note dated September 1, 1987, payable to Stanley and secured by a mortgage on Rick's home. Rick claimed Stanley forgave the unpaid balance of the note, citing conversations with Stanley concerning the note. Rick also cited the provisions of a codicil to Stanley's will leaving him the mortgaged property and the fact that the note was not included as an asset in Stanley's estate.

Kathy also claimed the antique light fixtures located in the Summit Street house should not be included in the option price because they were separately identified and appraised as personal property in both Kathleen's and Stanley's estates, and if the court concluded otherwise, Kathy requested the option price be adjusted to reflect the appraised value of the antique light fixtures. Kathy further claimed Rick forfeited his option to purchase the Summit Street property by failing to pay the option price within the time prescribed in Kathleen's will. Kathy alternatively requested the option price be adjusted to reflect current market value (\$336,000) and Rick be required to pay interest on the option price from the date payment was due under the will until paid.

The trial court's April 7, 2007 ruling addressed these issues. The court determined the unpaid balance of the disputed promissory note was \$23,000. The court rejected Rick's claim that Stanley forgave the unpaid balance of the note, citing the absence of any supporting consideration or writing expressly forgiving the balance of the note. The court accordingly determined the promissory note was an asset of Kathleen's estate and the executor was

authorized to release the mortgage on Rick's home upon payment or other satisfaction of the unpaid balance of the note. The trial court also determined the lamps at issue were fixtures that would remain in the house and "[i]t was not the fault of [Rick]" if they were included in the personal property appraisal and not the house appraisal.

Finally, the trial court found Rick is entitled to purchase the house at the appraisal value of \$295,000. The trial court's ruling states:

Through no fault of Rick's, finalization of the distribution of his parents' estates has been tied up in this litigation, and it would be unfair to penalize Rick by increasing the price of the house more than \$40,000.00 when Rick has been willing to purchase the house all along.

On April 16, 2007, Kathy filed an Iowa Rule of Civil Procedure 1.904(2) motion, requesting the court to rule on her request for interest on the \$295,000 purchase price of the house. The trial court's April 23, 2007 order denied Kathy's request because:

[Rick] has been unable to have the use of the property because of the executor's (and Ms. Cross's) unwillingness to give him unfettered possession of the property until the voluminous and valuable personal property which is the subject matter of this action is either removed to storage or equitably divided by the parties pursuant to Kathleen M. Cross's last will and testament.

On appeal, Kathy claims:

- I. IT IS INEQUITABLE FOR RICK TO RECEIVE \$27,000 WORTH OF COLLECTIBLE LAMPS WITHOUT A CORRESPONDING ADJUSTMENT IN EITHER HIS SHARE OF THE TANGIBLE PERSONAL PROPERTY OR THE PRICE OF THE HOUSE
- II. IT IS INEQUITABLE TO ALLOW RICK TO AVOID PAYING INTEREST ON THE DETERMINED PRICE FOR THE HOUSE, WHEN THAT PAYMENT WILL BE MADE APPROXIMATELY THREE YEARS LATE

On cross-appeal, Rick claims he “should not be required to pay the estate \$23,000.00 for a loan his father made to him and later forgave.”

II. Standard of Review

This matter was tried in equity. Review of a determination in equity of the rights and obligations of parties to property devised under a will is de novo. *Gustafson v. Fogleman*, 551 N.W.2d 312, 314 (Iowa 1996). We give weight to the district court’s factual findings, especially those involving witness credibility; however, we are not bound by its findings or conclusions of law. *In re Estate of Gearhart*, 584 N.W.2d 327, 329 (Iowa 1998).

III. Summit Street Property Issues

Although Kathy concedes the antique lights or lamps at issue are fixtures, she, nevertheless, argues it would be inequitable to include them in the sale price of the Summit Street Property and the price should be increased by their appraised value as personal property. We disagree.

Kathy’s argument ignores the law of fixtures, as well as the trial court’s May 4, 2005 ruling. The record indicates the light fixtures were attached to the house and were accordingly part of the real estate at the time it was appraised for \$295,000. See *Young v. Iowa Dep’t of Transp.*, 490 N.W.2d 554, 556 (Iowa 1992). Moreover, the trial court’s May 4, 2005 ruling expressly deferred to the executor’s authority under Kathleen’s will to accept the \$295,000 value given by the executor’s appraiser. Because the May 4, 2005 ruling was entered following notice and a hearing, it is a final judgment on the issues resolved, including the option price of the Summit Street property. See Iowa Code § 633.36 (2003); *In*

re Estate of Young, 273 N.W.2d 388, 391 (Iowa 1978) (stating all court orders entered in probate proceedings are final judgments if entered on notice and hearing). In the absence of a timely appeal from that ruling, we lack jurisdiction to consider Kathy's challenge to the appraised value of the Summit Street property. See *In re Estate of Meyers*, 269 N.W.2d 127, 128 (Iowa 1978).

Kathy also argues that if the value of the light fixtures is not added to the option price of the Summit Street property, their value should be credited against Rick's share of Kathleen's personal property. It is not clear whether Kathy raised this issue in the trial court. In any event, it was not addressed in the trial court's April 5, 2007 ruling or the trial court's April 23, 2007 order overruling Kathy's rule 1.904(2) motion. Because Kathy failed to obtain a ruling on this issue, it has not been preserved for our review. *Top of Iowa Coop. v. Sime Farms, Inc.*, 608 N.W.2d 454, 470 (Iowa 2000).

We also reject Kathy's demand for interest on the option price. Like the trial court, we find the transaction was not completed because the executor was unable or unwilling to deliver possession of the Summit Street property within the time prescribed in the will. Because Rick is not and has not been a "vendee in possession," Kathleen's estate is not entitled to interest to compensate for his use of the property. See *In re Kaldenberg's Estate*, 256 Iowa 388, 393, 127 N.W.2d 649, 652 (Iowa 1964). We affirm on these issues.

IV. Promissory Note

Rick argues Stanley forgave the unpaid balance of the 1987 note as a gift and the provisions of Stanley's codicil constitute written proof the note was forgiven.¹ We disagree.

Absent supporting consideration, a discharge or forgiveness of a contractual obligation requires delivery of some instrument in writing. *Gartin v. Taylor*, 577 N.W.2d 410, 413 (Iowa 1998). A will or codicil is sufficient for this purpose if the will or codicil "manifest[] the intent to extinguish the debt by express words or by implication." *In re Estate of Randeris*, 523 N.W.2d 600, 605 (Iowa Ct. App. 1994). Although Stanley's codicil left real estate to Rick that was security for the promissory note, the codicil makes no reference to the note or Stanley's intention to forgive the unpaid balance of the note. We accordingly affirm on this issue.

As a final matter, we note the parties' arguments on appeal are premised on their respective notions of an equitable result in this case. Our decision is not informed by their arguments, and those arguments are not controlling. While it is true we are afforded some flexibility in equitable proceedings, we are, nevertheless, bound by statute, and in the absence of fraud or mistake, equity must follow the law. *In re Receivership of First Nat'l Bank*, 523 N.W.2d 591, 596 (Iowa 1994).

AFFIRMED.

¹ Rick asserts no other defenses.