

IN THE COURT OF APPEALS OF IOWA

No. 8-537 / 07-2117
Filed December 31, 2008

BARD GILTNER,
Plaintiff-Appellee,

vs.

ESTATE OF MARJORIE E. GILTNER,
BERT GILTNER, Executor,
Defendant-Appellant.

Appeal from the Iowa District Court for Wapello County, James Q. Blomgren, Judge.

Bert Giltner, as executor of the Estate of Marjorie Giltner, appeals from the trial court's ruling dismissing the executor's claim for rent. **AFFIRMED.**

Heather M. Simplot and John R. Webber III of Harrison, Moreland & Webber, P.C., Ottumwa, for appellant.

Craig R. Foss and Gary L. Cameron of Foss, Kuiken, Gookin & Cochran, P.C., Fairfield, for appellee.

Considered by Sackett, C.J., and Huitink and Mahan, JJ.

HUITINK, J.

Bert Giltner, as executor of the Estate of Marjorie Giltner, appeals from the trial court's ruling dismissing the executor's claim for cash rent from a holdover tenant in possession of the decedent's farmland.

I. Background Facts and Proceedings.

Bert Giltner, as executor of the Estate of Marjorie Giltner, sued his brother, Bard Giltner, to recover three years' cash rent on sixty-five acres of farmland (farm) Bard was renting from Marjorie when she died in August 2002. Under the terms of Bard's lease with Marjorie, the annual cash rent was equal to the amount of the real estate taxes on the farm. Bard denied liability for cash rent in excess of the real estate taxes he paid on the farm, citing the absence of timely notice terminating his farm tenancy and his resulting right as a holdover tenant to continue renting the farm on the same terms and conditions as he did before Marjorie died. The executor claimed Bard's tenancy terminated upon Marjorie's death and the statutory provisions requiring timely notice of termination of a farm tenancy were inapplicable under the circumstances of this case.

The executor's claim for rent was submitted on stipulated facts to the trial court sitting in probate. The parties' stipulation indicates Bard and Bert mistakenly assumed Marjorie had given all but a life estate in the farm to Bard before she died. Bard accordingly retained possession of the farm, made improvements, and thereafter paid the annual real estate taxes. When it was subsequently discovered Marjorie still owned the farm when she died, her will was admitted to probate for administration. Bard and Bert were appointed co-executors. Marjorie's will left all of her real property not otherwise disposed of to

Bard and Bert in equal shares. Bard purchased the farm from the estate in May 2006.

The trial court determined the statutory provisions requiring notice of termination of a farm tenancy applied and neither the executor's equitable estoppel nor unjust enrichment theories precluded their application in this case. In the absence of timely notice of termination, the trial court determined Bard, as a holdover tenant, was entitled to continue renting the farm on the same terms and conditions as he did prior to Marjorie's death. Because Bard paid the real estate taxes for the crop years at issue, the court dismissed the executor's claim for additional cash rent. The executor did not file any posttrial motions requesting the court to address the alternative theories of Bard's liability for additional rent raised either in the pleadings or at trial.

The executor appealed. This matter was remanded to the district court for a determination of the nature and extent of the decedent's interest in the real property at issue. On remand, the court ruled that at the time of her death, Marjorie Giltner was the fee simple owner of the farm, which was subject to an oral lease with her son Bard Giltner.

II. Standard of Review.

Probate matters are heard in equity, and review of those decisions is de novo. Iowa Code § 633.33 (2007); Iowa R. of App. P. 6.4. As the reviewing court in this equity case,

it is our responsibility to review the facts as well as the law and determine from the credible evidence rights anew on those propositions properly presented, provided issue has been raised and error, if any, preserved in the trial proceedings. While weight

will be given to findings of the trial court, this court will not abdicate its function as triers de novo on appeal.

Wilden Clinic, Inc. v. City of Des Moines, 229 N.W.2d 286, 289 (Iowa 1975).

III. Discussion.

On appeal the executor contends the trial court erred in ruling that Bard was not obligated to pay rent for the farm. We disagree.

Marjorie Giltner, at the time of her death, was the fee simple owner of the farm, which was subject to an oral lease with her son, Bard Giltner. Iowa Code section 633.351 provides:

If there is no distributee of the real estate present and competent to take possession, *or if there is a lease of such real estate outstanding*, or if the distributees present and competent consent thereto, the personal representative shall take possession of such real estate, except the homestead and other property exempt to the surviving spouse. Every personal representative shall take possession of all the personal property of the decedent, except the property exempt to the surviving spouse. The personal representative may maintain an action for the possession of such real and personal property or to determine the title to any property of the decedent.

(Emphasis added.) Section 633.351 was addressed in the case of *In re Franzkowiak's Estate*, 290 N.W.2d 1, 5 (Iowa 1980):

Frank occupied the farm under lease; hence the executor would step into the shoes of the decedent-lessor. *Colthurst v. Colthurst*, 265 N.W.2d 590, 595 (Iowa 1978). Since Frank occupied in the capacity of a lessee rather than as devisee or heir, the lease terms and landlord-tenant statutes would apply. To terminate the lease the executor would have to proceed under sections 562.6 and 562.7 of the Code, and then to obtain actual possession over Frank's objection the executor would have to proceed by plenary action in district court, under the last sentence of section 633.351.

Here, because Bard occupied the farm under lease, “the executor would step into the shoes of the decedent-lessor” and “the lease terms and landlord-tenant statutes would apply.”

In order to terminate Bard’s lease, the executor-lessor was required to give notice, see Iowa Code § 562.7 (notice requirements), or the parties could agree to terminate. See *id.* § 562.6 (agreement of termination). The executor did not give the required notice, and the parties did not agree to terminate. Thus, Bard’s lease continued with its original terms.

The executor argues:

- (1) The lease terminated upon the death of Marjorie Giltner through the provisions of her will.
- (2) Bard should be estopped from asserting a notice requirement to terminate a lease that he never claimed existed until the executor’s Claim for Rent.
- (3) Bard should be required to pay rent for the fair market value of the land because of his fiduciary duty to the estate.
- (4) Bert is a remainderman for the farm and did not agree to the continuation of the lease and the estate should be compensated.
- (5) Bard Giltner knew or should have known that there was a mistake about the ownership of the farm and should not be unjustly enriched.

The first and fourth arguments of the executor are premised upon an assertion that Marjorie Giltner had a life estate in the farm. As already noted, Marjorie Giltner’s interest was that in fee simple subject to an oral lease and thus those arguments are summarily rejected.

We agree with the district court that neither the executor’s equitable estoppel nor unjust enrichment theories preclude the application of the notice requirements in this case. Both brothers mistakenly believed Bard was the sole owner of the farm involved here. Their belief was not a result of bad faith, but

mutual mistake. Equity will not interfere under such circumstances. *Cf. Wilden Clinic*, 229 N.W.2d at 289 (noting “equity will interfere, in its discretion, in order to prevent intolerable injustice”) (citation omitted).

The executor did not raise the claim in the district court that rent was required in light of Bard’s fiduciary duty. Consequently, the claim is not properly before us. See *id.* (noting appellate court review is for those issues “raised and error, if any, preserved in the course of the trial court’s proceedings”).

IV. Conclusion.

Because Marjorie Giltner, at the time of her death, was the fee simple owner of the farm subject to an oral lease with her son, Bard Giltner, the lease terms and landlord-tenant statutes would apply. The executor did not give the required notice, and the parties did not agree to terminate the lease. Thus, Bard’s lease continued with its original terms, and the estate was not entitled to additional rent. We affirm.

AFFIRMED.