

IN THE COURT OF APPEALS OF IOWA

No. 8-943 / 08-0775
Filed February 4, 2009

**IN THE MATTER OF THE TRUSTEESHIP
UNDER THE WILL OF WILBERT H. FRYE,
Deceased,**

**ROBERT D. FRYE, BENJAMIN D. FRYE
and HANA M. FRYE,
Objectors-Appellants.**

Appeal from the Iowa District Court for Buchanan County, Jon C. Fister,
Judge.

Objectors appeal the dismissal of their action under Iowa Rule of Civil
Procedure 1.421(1)(f). **AFFIRMED.**

Michael Coyle, Mark Willging, and Danita Grant of Fuerste, Carew, Coyle,
Juergens & Sudmeier, P.C., Dubuque, for appellants.

Brian Eddy of Eddy Law Firm, Independence, Gary McClintock of Hoeger
& McClintock, Independence, Thomas Peffer of Shuttleworth & Ingersoll, P.L.C.,
Cedar Rapids, and Franklin Sauer, Independence, for appellees.

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

MAHAN, J.

Robert Frye, a remainder beneficiary under a residuary trust created by a will established by his father, Wilbert Frye, along with Benjamin Frye and Hana Frye (objectors) appeal the dismissal of their action under Iowa Rule of Civil Procedure 1.421(1)(f). The objectors claim the district court erred in failing to find they had standing under Iowa Code section 633.1102 (2007) to object to the trustee's final report. We affirm.

I. Background Facts & Proceedings.

Wilbert Frye died in 1989. Oweetis Frye is Wilbert's surviving spouse.¹ Robert Frye is one of Wilbert's children.² Benjamin Frye and Hana Frye are Robert's children.³ Wilbert's will created a residuary trust. The trust was funded by the residue of Wilbert's estate, which specifically included several real estate tracts and all stock in Pilot Grove Farm, Inc. Banklowa was named corporate trustee.

Wilbert's will provides, in relevant part:

If my wife, Oweetis Frye, survives me, I bequeath the residue of my estate, which shall be called the "RESIDUARY TRUST", to the trustee hereinafter named, to be administered as follows:

A. During the life of my wife:

1. My trustee shall pay the net income to my wife in convenient installments.
2. In addition to the net income, my corporate trustee shall pay to my wife such sums from the principal as my corporate trustee deems advisable for her health, education, support, and maintenance.

B. At the death of my wife:

¹ Oweetis died on February 19, 2007.

² Wilbert also named his other child, Richard Frye, as a remainder beneficiary under his residuary trust. Richard has not objected to the trustee's final report.

³ Benjamin and Hana were not named in Wilbert's will. However, they claim to have an interest in Wilbert's residuary trust as residual beneficiaries of the estate of Oweetis.

1. My trustee shall pay over and distribute the entire remaining assets as follows:
 - a. If any part of the following described property is a part of my trust assets at the time of final distribution . . . I give, devise and bequeath said real estate to my son, Robert Frye.
 - b. If any part of the following described property is a part of my trust assets at the time of final distribution . . . I give, devise and bequeath said real estate to my son, Richard Frye.
 - c. If any shares of Pilot Grove Farm, Inc. are a part of my trust assets at the time of final distribution, I give, devise and bequeath said shares to my son, Richard Frye.
 - d. All the rest, residue and remainder of the trust assets then remaining are to be paid as follows:
 - One half (1/2) to my son, Robert Frye;
 - and
 - One half (1/2) to my son, Richard Frye.

The trust has continued to be administered by Banklowa. In September 2007 Banklowa filed its final report. In October 2007 the objectors filed objections to the trustee's final report, alleging that Banklowa breached its fiduciary duty by (1) failing to obtain fair market rent of the substantial farm real estate owned by the trust and (2) failing to provide an accounting that discloses how Banklowa discharged its fiduciary obligation with regard to 115 shares of Pilot Grove Farm, Inc., an asset of the trust. The objectors requested the court to remove Banklowa as trustee, and further asked the court to remove Banklowa as executor of Oweetis's estate. Banklowa filed a response and a motion to dismiss the objectors' objections to its final report. Banklowa contended the objectors lacked standing to object to the final report because they were not beneficiaries of Wilbert's trust. On March 11, 2008, hearing was held on Banklowa's motion to dismiss, and the court granted the motion. The objectors now appeal.

II. Standard of Review.

Standing means that a party must have a sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of the controversy. *Baker v. City of Iowa City*, 750 N.W.2d 93, 98 (Iowa 2008); *Birkhofer ex rel. Johannsen v. Birkhofer*, 610 N.W.2d 844, 849 (2000). In order to have standing a party must show (1) a specific, personal, and legal interest in the litigation and (2) an injury. *Baker*, 750 N.W.2d at 98-99; *Birkhofer*, 610 N.W.2d at 849. When a question is presented to a court by an individual having no standing to raise the issue, the court is deprived of jurisdiction over the question. *In re Trust of Willcockson*, 368 N.W.2d 198, 202 (Iowa Ct. App. 1985). We review rulings on motions to dismiss for lack of standing for correction of errors at law. Iowa R. App. P. 6.4; *City of Dubuque v. Iowa Trust*, 519 N.W.2d 786, 789 (Iowa 1994).

III. Merits.

The objectors claim the district court erred in failing to find that Robert has standing as a remainder beneficiary of Wilbert's residuary trust and that Benjamin and Hana have standing as residual beneficiaries of the estate of Oweetis. Specifically, the objectors argue they are "interested parties," as defined under Iowa Code section 633A.1102(10), and that they therefore have standing to invoke judicial intervention.

Iowa Code section 633A.6201 provides, "The administration of trusts shall proceed expeditiously and free of judicial intervention, except to the extent the jurisdiction of the court is invoked by interested parties or otherwise exercised as provided by law." The term "interested person" is defined as:

[A] trustee, an acting successor trustee, a beneficiary who may receive income or principal currently from the trust, or would receive principal of the trust if the trust were terminated at the time relevant to the determination, and a fiduciary representing an interested person. . . .

Iowa Code § 633A.1102(10). The objectors rely on the last sentence of section 633A.1102(10) which provides, “The meaning [of ‘interested person’] as it relates to particular persons may vary from time to time according to the particular purpose of, and matters involved in, any proceeding.” The definition of “interested person” has been described as follows:

[In the Iowa Trust Code, a] broad definition of interested person is given. Discretionary recipients of income or principal, and persons who would receive corpus if the trust terminated at the relevant time, are included, as are acting trustees and fiduciaries representing interested persons. The statutory provision permitting the meaning of the term to vary, depending on the purpose of and matters involved in the proceeding, gives the court discretion. The definition is used to ensure the proper persons are parties so all positions are presented, and at the same time, to prevent vexatious litigation by those whose interests are not relevant to the matter involved.

Martin D. Begleiter, *In the Code We Trust—Some Trust Law for Iowa at Last*, 49 Drake L. Rev. 165, 180 (2001) (internal citations omitted).

In its order granting Banklowa’s motion to dismiss, the district court stated:

The objectors’ claim, basically, is that the trustee, as trustee of this trust and as executor of the trust beneficiary’s estate, failed to maximize the income to the estate from the trust which could diminish one of the objectors’ specific bequest and the interest of his children as residuary beneficiaries of their grandmother’s estate. No effort has been made by the objectors to replace the executor of the estate.

According to Section 633A.6201 of the Iowa Trust Code, interested parties may invoke the jurisdiction of the Court, and interested parties are defined as trustees, acting successor trustees, current income or principal beneficiaries of the trust, or who would receive principal of the trust if the trust were terminated

and fiduciaries representing interested persons. The objectors are none of these named individuals. Sections 633A.4502 and 633A.6202 of the Iowa Trust Code confer standing on beneficiaries and trustees or co-trustees only.

To date, these objectors who are the beneficiaries of the estate of the beneficiary of this trust have done nothing to remove or replace the executor of the beneficiary's estate, although they would clearly have standing to initiate such a proceeding. In the Court's view, the objectors' remedy is to obtain a successor executor of the beneficiary's estate who can then represent the estate against the trust for any mismanagement of the trust by the trustee. The objectors, as such, cannot represent the beneficiary's estate as against the trust indirectly by filing the objections they have filed.

Based on the authority by the objectors, the Court finds that their interest in the management of the trust is too indirect for them to attack it directly and their remedy is by way of the beneficiary's estate.

Upon our review of the record, we conclude the district court correctly applied the law with regard to objectors Benjamin and Hana. A trustee owes a duty of loyalty to the trust and to its beneficiaries and must act in good faith in all actions affecting the trust. *Schildberg v. Schildberg*, 461 N.W.2d 186, 191-92 (Iowa 1990). Oweetis was the sole income beneficiary under the trust. Robert was a remainder beneficiary. Benjamin and Hana, however, are not interested persons or beneficiaries of Wilbert's trust, as they were not entitled to *any* property or interest under the trust. As a result, Benjamin and Hana have no standing to allege Banklowa breached its fiduciary duty. We therefore determine Benjamin and Hana's claims were properly dismissed. With regard to Robert, we disagree with the district court in its determination that he is not an interested party. Under the Iowa Trust Code's broad definition of interested persons, we find that Robert is an interested party as a remainder beneficiary of Wilbert's residuary trust.

We do not find, however, that Robert has standing to invoke judicial intervention in this case. Standing requires a party to show (1) a specific, personal, and legal interest in the litigation and (2) an injury. *Baker*, 750 N.W.2d at 98-99; *Birkhofer*, 610 N.W.2d at 849. Although we have found that Robert (as an interested person) has a specific, personal, and legal interest in the litigation, he must also show that he has been injured. Robert was not entitled to receive income from rental payments collected by real estate owned by Oweetis and the trust. Furthermore, Robert was not entitled to any Pilot Grove Farm, Inc. stock under the trust.⁴ We do not find that Robert was injured by Banklowa's actions. His injury, if any, is in his mother's estate. But, that matter is not before us in these proceedings. As a result, Robert has no standing to object to the amount of rent Banklowa charged on the real estate tracts or Banklowa's handling of the trusts shares of Pilot Grove Farm, Inc.

We conclude the objectors in this case lack standing and dismissal of their claims was proper. We therefore affirm the decision of the district court.

AFFIRMED.

⁴ Pilot Grove Farm, Inc. stock was specifically bequested to Robert's brother, Richard.