

IN THE COURT OF APPEALS OF IOWA

No. 9-923 / 09-0347
Filed January 22, 2010

**IN THE MATTER OF THE TRUST OF
GARY D. HANLEN, Deceased,**

ANNA WHITAKER,
Intervenor-Appellant.

Appeal from the Iowa District Court for Woodbury County, Gary E. Wenell,
Judge.

Anna Whitaker appeals from the district court's determination of
decedent's principal residence. **AFFIRMED.**

Charles L. Corbett of Corbett, Anderson, Corbett, Vellinga & Irvin, L.L.P.,
Sioux City, for appellant.

Michael W. Ellwanger of Rawlings, Nieland, Killinger, Ellwanger, Jacobs,
Mohrhauser, Nelson & Early, L.L.P., Sioux City, and Richard H. Moeller, Sioux
City, for appellees.

Considered by Sackett, C.J., and Vaitheswaran and Danilson, JJ.

DANILSON, J.

Anna Whitaker appeals from the district court's determination on trust beneficiaries' motion for summary judgment that the decedent's principal residence was not 836 Brookside, North Sioux City, South Dakota. We affirm.

I. Background Facts and Proceedings.

The following undisputed facts were presented to the probate court. Anna Whitaker resided with Gary Hanlen from March 2002 until October 2007 in Gary Hanlen's home at 1213 West 32nd Street, Sioux City, Iowa.¹

In May 2007, Gary Hanlen executed a trust (Hanlen Trust), which reads in relevant part:

3. Specific Bequest. My trustee shall distribute my current home (or my principal residence at the time of my death, if different) commonly known as 1213 West [32nd] Street, Sioux City, Iowa and legally described as Lot Nine (9), Valentine Place, Second Addition to Sioux City, Woodbury County, Iowa, to Anna Whitaker, if she survives me. If she does not survive me, this gift shall lapse and shall be added to the residue of my trust assets for distribution hereunder.

The Hanlen Trust further provided that upon Gary Hanlen's death, Anna Whitaker (20%), Rebecca Hansen (10%), and Tammi Fagan (10%), would receive a portion of the remaining assets of the trust; the other sixty percent of the remaining assets would remain in the trust for the benefit of Robert Hanlen, and then distributed to charitable organizations upon Robert's death.

¹ The trust document contains the street address as 1213 West 23rd Street, which typographical error is also contained in the beneficiaries' petition. All parties agree, however, that the correct address is 1213 West 32nd Street.

On October 16, 2007, Gary Hanlen was hospitalized at Mercy Medical Center in Sioux City and underwent a surgical procedure. Ms. Whitaker continued to reside at 1213 West 32nd Street, Sioux City, Iowa.

On October 23, 2007, the Hanlen Trust acquired a lot in Union County, South Dakota, with a street address of 836 Brookside, North Sioux City, South Dakota.

On October 28, 2007, a contract was executed between the Hanlen Trust and Able Development Corporation for the construction of a home at 836 Brookside, for a base price of \$203,895.

Gary Hanlen remained a patient at Mercy until his death on December 28, 2007.

The South Dakota house was completed several months after Gary Hanlen's death, using trust monies.

In June 2008, trust beneficiaries Robert Hanlen, Rebecca Hansen, and Tammi Fagan filed a petition with the probate court, requesting the court assert jurisdiction over the administration of the Hanlen Trust. The petition alleges that Anna Whitaker "has demanded that the Trustee convey to her the South Dakota property, rather than Mr. Hanlen's residence at 1213 West [32nd] Street." The petitioning trust beneficiaries then moved for summary judgment, asking the probate court to "declare that the South Dakota property was not the residence of Gary D. Hanlen at the time of his death."

Anna Whitaker resisted, contending it was Gary Hanlen's intent that the South Dakota house be his principal residence.

The probate court granted partial summary judgment to the petitioning beneficiaries. The court wrote:

Although the affidavit of Ms. Whitaker suggests that [she] and Mr. Hanlen had various plans for the future, they were merely plans. From a reading of her affidavit, it is clear that Mr. Hanlen was in possession of his faculties, at least in September and October of 2007, if not additionally in November and part of December. He is presumed to know what is in the trust document he signed and created only a few months before on May 18, 2007. It appears that he had ample opportunity to make any changes he might have desired in that he was in contact with his attorney. No changes were made however.

In view of these undisputed facts, the initial portion of the motion is granted and it is hereby declared, ordered, adjudged and decreed that the South Dakota property, i.e., 836 Brookside, North Sioux City, South Dakota, was not the residence of Gary D. Hanlen at the time of his death.

Anna Whitaker now appeals. She argues that Gary Hanlen knew he could not return to the 1213 West 32nd Street house due to his medical condition and that he intended the new home to be built during his period of hospitalization and rehabilitation. She contends that in these unique circumstances, the probate court should have found that the South Dakota house was Gary Hanlen's "principal residence," which should be conveyed to her.

II. Scope and Standard of Review.

We review the grant of summary judgment for errors of law. See *Lobberecht v. Chendrasekhar*, 744 N.W.2d 104, 106 (Iowa 2008). Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact, and that the moving party is entitled to a judgment as a matter of law." Iowa R. Civ. P. 1.981(3). We view the evidence

presented in the light most favorable to the party opposing summary judgment. *Lobberecht*, 744 N.W.2d at 106.

III. Analysis.

Our analysis is grounded upon the rule that the trust settlor's intent must prevail. *In re Trust of Killian*, 459 N.W.2d 497, 499 (Iowa 1990). "That intent is to be determined from the language of the instrument, the scheme of distribution, and the facts and circumstances surrounding the document's execution." *Id.* We do not resort to technical rules of construction unless ambiguous language in the trust creates uncertainty about the maker's intent. *Id.*

We begin with the specific language of the Hanlen Trust. The pertinent clause provides in part:

My trustee shall distribute my current home (or my principal residence at the time of my death, if different) commonly known as 1213 West [32nd] Street, Sioux City, Iowa and legally described as Lot Nine (9), Valentine Place, Second Addition to Sioux City, Woodbury County, Iowa, to Anna Whitaker, if she survives me.

There is no doubt that at the time Mr. Hanlen executed the trust, his "current home" was 1213 West 32nd Street. Thus, this is the home to be distributed to Ms. Whitaker unless Mr. Hanlen's "principal residence at the time of [his] death" was different.

Ms. Whitaker contends that even though construction of the South Dakota residence was not complete prior to Mr. Hanlen's death, it was his intention that it be his principal residence. Even viewing the evidence in the light most favorable to Ms. Whitaker, there is no basis upon which the probate court could conclude that the partially constructed South Dakota house was Mr. Hanlen's principal residence at the time of his death, intent notwithstanding.

Construction of the South Dakota house was not complete until spring or summer 2008, after Mr. Hanlen's death. "Residence" has an ordinary meaning of "the act or fact of dwelling in a place for some time"; "the place where one actually lives." Webster's New Collegiate Dictionary 977 (ed. 1981); *accord Estate of Titterington's*, 130 Iowa 356, 358, 106 N.W. 761, 762 (1906) (noting that "residence" indicates "the place of dwelling, whether permanent or temporary"). Mr. Hanlen never in fact lived or resided at 836 Brookside, North Sioux City, South Dakota. He may well have intended to make it his principal residence at some point, but he had not done so at the time of his death. Mr. Hanlen's principal residence at the time of his death was not different than his home at the time the trust was executed.

The probate court did not err in concluding 836 Brookside, North Sioux City, South Dakota, was not Gary Hanlen's principal residence at the time of his death. We affirm.

AFFIRMED.