

**IN THE COURT OF APPEALS OF IOWA**

No. 9-930 / 09-0449  
Filed February 10, 2010

**IN THE MATTER OF THE ESTATE OF  
PEARL I. AMLIE, Deceased,**

**ROSEMARY AHLERICH,**  
Intervenor-Appellant.

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Appeal from the Iowa District Court for Humboldt County, Kurt Wilke,  
Judge.

Rosemary Ahlerich appeals from the district court order approving the final  
report of the Executor of the Estate of Pearl Amlie. **AFFIRMED.**

Eric J. Eide of the Law Office of Eric J. Eide, Fort Dodge, for appellant.

Dave P. Jennett of David Jennett, P.C., Storm Lake, for appellee.

Heard by Vogel, P.J., Eisenhauer, J., and Zimmer, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

**EISENHAUER, J.**

Rosemary Ahlerich appeals from the district court order approving the final report of the Executor of the Estate of Pearl Amlie. She contends the court erred in interpreting the provisions of the will and family settlement agreement governing the estate. We affirm.

***I. Background Facts and Proceedings.*** Pearl Amlie had three children: Rosemary, Thomas, and Rodney. In November 1978, Pearl executed a will leaving “any farm real estate I may own” to Rosemary and Thomas<sup>1</sup> to share and share alike. The will also devised a portion of a certain bank stock to Rod, “as will equal one-half of the value of the above real estate as valued for Iowa Inheritance Tax purposes.” Rod and his family were also granted the first right to purchase the balance of the stock Pearl owned at the time of her death and the right to purchase or exchange property with Rosemary and Thomas for an undivided one-third interest in a certain portion of the farmland. Any remaining property was to be given to Pearl’s grandchildren, not to exceed \$10,000 each, with any remaining funds to going to Rosemary, Thomas, and Rod to share and share alike. Finally, Pearl named Rod the executor of the will.

In July 1986, Pearl executed a codicil to the will, which substituted the Rod Amlie Trust as the beneficiary of any of Rod’s bequests under the will. No other changes were made.

In 1988, a conservator was appointed to handle Pearl’s financial affairs. The conservator exchanged the various bank stocks Pearl owned for 6657

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<sup>1</sup> Thomas preceded Pearl in death and therefore his share of the estate is split between his two children, Bob and Susan, and their respective families.

shares in First American Bank Group (FABG) common stock. A 1995 Family Settlement Agreement (FSA) states the stock is to be valued at \$118.23 plus a 6% annual increase for estate distribution purposes. It also allows Rod's family to acquire the remainder of FABG stock at the same price.

The FSA provides, "This Agreement further will serve as an aid to the Executor of the Pearl I. Amlie Estate in valuing and distributing assets currently owned by Pearl I. Amlie." It also states:

By establishing a value of the remaining bank stock, it is anticipated and understood that there will be sufficient existing bank stock to fulfill the bequest to the Rod Amlie family. In the unlikely event that there is not sufficient bank stock to fulfill [the bequest to the Rod Amlie family], the preceding paragraph on ademptions will insure all parties, including the Rod Amlie family, that each family will receive an equal one-third (1/3) share in the Pearl I. Amlie Estate as intended by the Ward.

The paragraph on ademption reads:

The parties agree that the Will of Pearl I. Amlie generally provides for the distribution of one-third (1/3) of Pearl I. Amlie's Estate to each of her children and/or their trust and heirs. It is recognized that since the execution of the Will, various changes in the bank stock existing at the time of execution of the Will have occurred. It is also recognized that it may be necessary, if remaining bank stock is not sold sometime in the future by this Conservatorship, that some farmland may be required to be liquidated. The parties agree that past and future changes in the bank stock shall not work an ademption to the detriment of the Rod Amlie family. The parties further agree that future sales of farmland by the Conservatorship shall not work as an ademption to the detriment of Rosemary Ahlerich, Bob Amlie, and Susan Wendel or their families. The parties hereby agree that they will not raise the issue of ademption at the time of the administration of the Estate of Pearl I. Amlie and further waive any right to raise the issue of ademption as part of the consideration of this Family Settlement Agreement.

Pearl died on October 18, 1998. Her will and codicil were admitted to probate the following day. As per the provisions of the will, Rod was appointed

as executor. On November 17, 1998, the FABG stock was sold to FABG and the proceeds of the sale under the terms of the FSA amounted to \$993,756.96.

On July 22, 1999, the estate filed a timely estate tax return with the IRS. The FABG stock was valued as of November 17, 1998, in the amount of \$993,756.96, and the farmland was valued as of April 18, 1999, in the total amount of \$752,721.00. Beginning in 2002, the estate was engaged in a battle concerning the taxes it paid. The case concluded in February 2008. The cash from the sale of the FABG stock was used to pay ongoing administrative expenses during the course of the case and income distributions from estate assets were made in thirds pursuant to the FSA.

On December 16, 2008, the executor's final report was filed, proposing all of the estate's assets including farmland be distributed equally in one-third shares to Rod, Rosemary, and Thomas's family. On January 16, 2009, Rosemary filed an objection to the final report, claiming the distribution was inconsistent with the terms of the will. A hearing was held on February 13, 2009.

On February 26, 2009, the district court entered its order denying Rosemary's objection and approving the final report. It found as follows:

Paragraph 4 of Pearl's will indicates that all taxes, debts, and costs of administration are to be paid out of the residuary estate. There was not enough cash in the residuary estate to cover all of these expenses. . . . Instead, the proceeds from the sale of the FABG stock were used to cover the expenses. While a portion of the FABG stock was a residuary asset, a specified amount of the stock was specifically bequeathed to Rod. Rosemary now argues that Rod is no longer entitled to the proceeds of this bequest. That would defeat Pearl's clearly demonstrated intent to divide her assets equally amongst her children.

Due to the insufficient level of residuary assets, it is no longer possible to distribute the assets as set forth in the will and

simultaneously effectuate Pearl's intent for equal distribution amongst her children. While the distribution proposed in the final report does not distribute the assets in the precise manner set forth in the will, it does effectuate Pearl's intent to equally divide the assets. This court believes that if Pearl had foreseen the circumstances now facing the court, she would have desired equal distribution of her estate amongst her three children. Therefore, the distribution proposed in the final report is approved.

Rosemary filed a timely appeal.

**II. Scope and Standard of Review.** Our review in appeals from rulings by the probate court on objections to an executor's final report is de novo. *Estate of Randeris v. Randeris*, 523 N.W.2d 600, 604 (Iowa Ct. App. 1994). However, the facts are essentially undisputed and the determinative issue is the probate court's interpretation and application of pertinent statutes. Therefore, our focus is necessarily on the correction of any error by the probate court in its interpretation and application of pertinent statutes. *Clymer v. City of Cedar Rapids*, 601 N.W.2d 42, 45 (Iowa 1999) (stating that where an equity case was submitted upon stipulation and argument the focus on appeal is necessarily on correction of any errors by the trial court in the interpretation and application of pertinent statutes).

**III. Analysis.** Rosemary contends the court erred in approving the executor's final report. She claims the court erred in interpreting the language of the will and FSA to require the estate be divided equally in one-third shares among Pearl's three children and their families. She specifically requests all farmland be divided equally between her and Thomas's heirs.

We turn then to the rules governing interpretation of wills.

In interpreting wills and testamentary trusts, we are guided by well settled principles: (1) the intent of the testator is the polestar and must prevail; (2) this intent, however, must be derived from (a) all of the language contained within the four corners of the will, (b) the scheme of distribution, (c) the surrounding circumstances at the time of the will's execution and (d) the existing facts; (3) we resort to technical rules or canons of construction only when the will is ambiguous or conflicting or the testator's intent is uncertain. In determining intent, the question is not what the testator meant to say, but rather what is the meaning of what the testator did say.

*In re Estate of Rogers*, 473 N.W.2d 36, 39 (Iowa 1991).

In searching the will for the testator's intent, we consider the instrument as a whole and give each part meaning and effect, if possible. *Id.* Extrinsic evidence may be considered by the court in resolving problems of ambiguity. *Id.* However, extrinsic evidence is not admissible to vary, contradict or add to terms of the will or to show an intention different from that disclosed by the language of the will. *Id.* Thus, extrinsic evidence may be considered only on issues which are in doubt. *Id.*

The plain language of the will states the farmland is to go to Rosemary and Thomas to share and share alike. Rod is to receive the bank stock in an amount equal to one-half the value of the farmland as valued for Iowa inheritance tax purposes, with an option to buy any remaining stock. The residue of the estate would then be split equally between the three children. The will anticipates that the total value of the bank stock will be greater than one-half of the farmland. It does not address what will occur if the value of the stock is less than one-half of the farmland.

However, our determination does not rest on interpretation of the will alone. Beneficiaries of a will are not required to accept its provisions. *In re*

*Swanson's Estate*, 239 Iowa 294, 300, 31 N.W.2d 385, 389 (1948). Instead, they may divide up the property as they see fit, and may do so even before they receive the property. *Id.* Family settlements, which provide for distribution in a manner different than the will, are favored by the courts. *Id.*

The beneficiaries of Pearl's estate entered into an agreement with regard to the distribution of the will. The FSA provides that in the event there is insufficient stock to fulfill the bequest in the will that Rod receive an amount of stock equal to one half of the farmland, each of the beneficiaries was to receive an equal one-third share of the estate. The question is whether there is sufficient stock to fulfill the bequest to Rod.

There is no dispute that at the time of Pearl's death, there was stock equal to one-half the value of the farmland. However, the cash received in the sale of the stock was substantially reduced during the administration of the estate. Rosemary admits the estate does not currently have sufficient cash to fund the specific bequest to Rod. The district committed no error in ordering each family to receive an equal one-third share of the estate.

We affirm the district court order approving the executor's final report.

**AFFIRMED.**