

IN THE COURT OF APPEALS OF IOWA

No. 2-362 / 91-1965

FILED

FEB 2 1993

CLERK SUPREME

IN THE MATTER OF THE GUARDIANSHIP AND
CONSERVATORSHIP OF GLENN T. MATZEN,

IN THE MATTER OF THE TRUST UNDER
THE LAST WILL AND TESTAMENT OF
GLADYCE L. MATZEN, Deceased,

FRED MATZEN, Executor of the
Estate of Glenn T. Matzen,

Appellant.

Appeal from the Iowa District Court for Clinton County,
L. D. Carstensen, Judge.

Fred Matzen appeals a district court order approving
the trustee's final reports in a testamentary trust created
in the will of Gladyce Matzen. **AFFIRMED.**

J. David Zimmerman of Pillers, Pillers & Pillers, P.C.,
Clinton, for appellant.

Mervin D. Woodin, Clinton, for appellee Wally S.
Schilling, Guardian and Conservator of Glenn Matzen and
Trustee for Gladyce Matzen.

Considered by Donielson, P.J., and Hayden and Sackett,
JJ.

HAYDEN, J.

Gladyce and Glenn Matzen lived next door to Wally and Fern Schilling in Clinton, Iowa, for many years. The Matzens had no children. The Matzens and Schillings became very good friends. The Schillings provided help to Gladyce and often visited Glenn after he was placed in a nursing home.

Gladyce died testate on April 24, 1988. Her will created a testamentary trust. Wally Schilling was named as trustee. Concerning the trust, the will provided:

The trustee shall distribute the trust assets for the support and maintenance and burial of my Husband as he may deem necessary in his good faith discretion and he shall distribute the trust assets to Fern S. Schilling, or her children if she does not survive my husband, at the time of my Husband's death.

On August 3, 1988, a conservatorship for Glenn was established. On September 6, 1988, the district court authorized the conservator to accept the terms of Gladyce's will and not elect to take against the will. The conservatorship had funds available from Glenn's own assets plus income from his social security, Veterans' Administration, and pension benefits. Wally was named conservator. Glenn's expenses were paid by conservatorship funds. Wally never used any of the trust assets or income for Glenn's maintenance.

Glenn died intestate on May 29, 1990. No trust funds were used for his burial. Glenn's brother, Fred Matzen, was appointed administrator of his estate. Glenn's estate was valued at about \$8,722.

In December 1990 Wally filed final reports in the trust and conservatorship, proposing to disburse the entire trust fund to Fern. The trust fund was then worth \$108,918. The district court approved the final reports on December 21, 1990.

In March 1991 Fred filed an objection to the final reports in the trust and the conservatorship. The matters were consolidated for consideration by the court. Fred claimed Wally had improperly used only Glenn's own assets, and not trust funds, for Glenn's maintenance. As Fred pointed out, due to Wally's actions, Wally's wife, Fern, received the entire amount of the trust, \$108,918. At the same time, as Glenn's conservator, Wally disbursed most of Glenn's funds so his estate was worth only \$8,722.

The district court considered extrinsic evidence to interpret the terms of the trust. Wally testified Gladyce, on her deathbed, had directed him to preserve her assets until Glenn's had been exhausted. The court found the trustee did not abuse his good faith discretion in refusing to use trust funds for the benefit of Glenn, when Glenn had sufficient assets of his own to meet his needs. The court approved the final reports. The court denied Fred's motion pursuant to Iowa Rule of Civil Procedure 179(b). Fred has filed this appeal.

Our scope of review in this case is de novo. See Iowa R. App. P. 4. Generally, the remedies of a beneficiary against the trustee are exclusively equitable. Carstens v.

Central National Bank & Trust Co., 461 N.W.2d 331, 333 (Iowa 1990).

Fred first contends the district court improperly considered extrinsic evidence in interpreting the terms of the testamentary trust created by Gladyce's will. He claims the terms of Gladyce's will are unambiguous and there is no need to resort to extrinsic evidence. Fred states the terms of the will clearly provide the trust funds should be used for the benefit of Glenn.

The polestar of our analysis is the rule the testator's intent must prevail. In re Trust of Killian, 459 N.W.2d 497, 499 (Iowa 1990). The purpose of a testamentary trust is determined by examining the language of the will and the surrounding circumstances. See Eldred v. Merchants National Bank, 468 N.W.2d 221, 223 (Iowa 1991). To determine a testator's intent, we examine the entire will and the circumstances surrounding the decedent at the time the will was made. Russell v. Johnston, 327 N.W.2d 226, 229 (Iowa 1982). Generally, extrinsic facts and circumstances cannot be resorted to in order to defeat the plain and unambiguous language of the will. Id.

As noted above, Gladyce's will provides:

[T]he Trustee shall distribute the trust assets for the support and maintenance and burial of my Husband as he may deem necessary in his good faith discretion.

(Emphasis added.)

We find this language is not ambiguous, and extrinsic facts are not needed to interpret the will. However, we also find the underlined language gives the trustee discretion to use trust funds as he deems necessary. Thus, under the terms of the trust, Wally had discretion to use trust funds for Glenn's maintenance only when it became necessary to do so.

We then turn to the second question, whether Wally abused his discretion in not using the trust funds for Glenn's benefit.

Generally, a court will not interfere with the exercise of discretion by a trustee unless the trustee acts dishonestly, or with an improper motive, or fails to use his or her judgment, or acts beyond the bounds of reasonable judgment. In re Estate of Tone, 240 Iowa 1315, 1321-1322, 39 N.W.2d 401, 405 (1949). While the court may control the administration of a trust created by will, it may not interfere based upon a mere difference of judgment between the court and the trustee. In re Estate of Small, 244 Iowa 1209, 1239, 58 N.W.2d 477, 492 (1953).

We find no evidence Wally acted dishonestly or with an improper motive. Clearly, Wally used his judgment in deciding not to disburse the trust funds. Furthermore, his actions are not beyond the bounds of reasonable judgment. We conclude Wally did not abuse his discretion.

We affirm the decision of the district court approving the final reports in the conservatorship and trust.

AFFIRMED.