

IN THE COURT OF APPEALS OF IOWA

MARILYN L. BARR, Executor of the)
Estate of CORINNE KENDRICK,)
Deceased,)

Plaintiff-Appellant,)

vs)

CITIZENS STATE BANK and ETHELENE)
JONES,)

Defendants-Appellees.)

Filed March 26, 1985

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84-751

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CLERK SUPREME COURT

Appeal from the Iowa District Court for Page County - J. C. Irvin, Judge.

Plaintiff appeals the judgment in a declaratory action to recover money paid out of Kendrick's checking account after her death. AFFIRMED IN PART AND REMANDED.

Richard G. Davidson of Davidson & Bailey, Clarinda, Iowa, for plaintiff-appellant.

Curtis Hewett of Smith, Peterson, Beckman & Willson, Council Bluffs, Iowa, for defendant-appellee bank.

Heard by Schlegel, P.J., Hayden, and Sackett, JJ.

SCHLEGEL, P.J.

Plaintiff, the executor of Corinne Kendrick's estate, appeals the judgment in a declaratory action to recover money paid out of Kendrick's checking account after her death. We affirm in part and remand.

This declaratory action was tried on the basis of stipulated facts. Corinne Kendrick had a checking account with defendant Citizens State Bank. On February 7, 1983, Kendrick and defendant Ethelene Jones appeared at the bank. Jones signed Kendrick's checking account signature card in Kendrick's presence.

On February 16, 1983, at 1:12 a.m., Kendrick died. At 10:30 a.m. the same day Jones presented a check—drawn upon Kendrick's account and signed by Jones—to defendant bank. Jones did not tell any bank employees that Kendrick was dead. The bank honored the check and paid Jones \$6,280.53, closing out the checking account. Jones then returned to Missouri.

The trial court ruled that the bank had been authorized to pay checks signed by Jones, and entered judgment against plaintiff on the claim against the bank. There was no disposition of the claim against Jones. Plaintiff appealed, arguing that the trial court erred by granting judgment in favor of the bank, and by failing to enter a default judgment against Jones.

I. Claim Against the Bank. We affirm the judgment in favor of defendant bank. The sole issue presented for review on this matter was whether the bank was authorized to pay checks drawn on Kendrick's account and signed only by Jones. This issue is one of contract interpretation. See In re Estate of Stamets, 260 Iowa 93, 98, 148 N.W.2d 468, 471 (1967) ("decendent's deposit and signature card constituted a contract between him and the bank"). The writing we must interpret is the checking account signature card.

We find the signature card to be ambiguous. The line on the card under the heading "Title of Account" reads "Corinne Kendrick (only)." The card also states it is for an individual account. Yet, both Kendrick's and Jones's names appear as

authorized signatures. There is no writing next to Jones's name that limits her authority to sign checks. Further, the space provided on the card for listing the number of required signatures is blank. Because the account title is in Corinne Kendrick's name "only," a genuine uncertainty results regarding the significance of listing Jones's name as an authorized signature, and we must conclude the signature card is ambiguous. See Gendler Stone Products v. Lamb, 179 N.W.2d 628, 631 (Iowa 1970).

In interpreting a contract, the intent of the parties must control. Iowa R. App. P. 14(f)(14). Under this record of stipulated facts we are unable to consider extrinsic evidence that could possibly help in ascertaining Kendrick's intent. Nor was there a prior course of performance that we could look to for help in determining intent. Because we cannot ascertain Kendrick's intent, we must determine which party should bear the loss that occurred due to the ambiguity.

We cannot say that the bank, because it held Kendrick's funds, had a duty to resolve any ambiguities regarding method of payment. The relationship between the bank and the depositor is that of debtor and creditor, Andrew v. Union Savings Bank and Trust Co., 220 Iowa 712, 715, 263 N.W. 495, 497 (1935); it does not take on a fiduciary character. State v. Smith, 162 Iowa 336, 346, 144 N.W. 32, 36 (1913). See also 10 Am. Jur. 2d Banks § 399 (1963).

The rule of law that should govern the disposition in this case was stated in Village Supply Co. v. Iowa Fund, Inc., 312 N.W.2d 551 (Iowa 1981). Doubts concerning the meaning of the agreement are to be resolved against its drafter. Id. at 555. While one could quibble that Kendrick was not the drafter in this case because the signature card was supplied to her by the bank, we believe that the rule should be invoked against her executor. It apparently was Kendrick's choice to title the account "Corinne Kendrick (only)." She had Jones sign the card. Apparently she failed to fill in the blank for listing the required number of signatures. There was no evidence presented that Kendrick relied on the bank's expertise and asked for help in filling out the signature card. Under these

circumstances it is proper to resolve the ambiguity against her executor. The trial court properly ruled that the bank was authorized to pay the check presented by Jones.

II. Claim Against Jones. Plaintiff argues that the trial court should have entered a default judgment against defendant Jones. Counsel for Jones timely appeared and filed answers to plaintiff's petition and the cross-claim of defendant bank. On November 14, 1983, however, the trial court entered an order allowing Jones's counsel to withdraw. On November 22, 1983, plaintiff filed a motion to have default judgment entered against Jones, based upon an alleged failure to appear. No ruling was ever issued on that motion.

We cannot agree with plaintiff that default judgment should have been entered, for two reasons. First, it is not clear that Jones was in default at the time the motion was filed. The record is clear that Jones did not appear at trial. That failure constituted default under Iowa Rule of Civil Procedure 230(c). However, the record is ambiguous whether trial occurred before or after the filing of the motion on November 22. On the one hand, the trial court's decree states that trial was held on November 17, and the two parties to this appeal apparently agree. On the other hand, the official transcript of the proceedings indicates the trial was on November 23, as does the entry of court minutes on the court calendar.

Second, even if Jones was in default, there has been no showing that plaintiff complied with the procedural prerequisites for obtaining default judgment. Specifically, Iowa Rule of Civil Procedure 87 required that Jones be given notice and opportunity to respond to the motion for default judgment. There is no evidence in the record that Jones received the required notice. The trial court did not err in failing to grant default judgment.

No final judgment has been entered on the claim against Jones. We therefore remand that portion of this case to the district court. Plaintiff shall initiate further proceedings within a reasonable time or be dismissed with prejudice.

AFFIRMED IN PART AND REMANDED.