

IN THE COURT OF APPEALS OF IOWA

FILED

JUN 25 1985

CLERK SUPREME COURT

EARL W. WEUVE, SR.,)

Plaintiff-Appellant/
Cross-Appellee,)

vs.)

EARL W. WEUVE, JR., YOLONDA
WEUVE, TODD WEUVE, KATHLEEN)
STARN, ANN WEUVE, DAVETTE)
BLANCHARD, TOM WEUVE, TIMOTHY)
WEUVE, JOSEPH PETET, KRIS SHAVER,
WILLIAM TRAVIS WEUVE, BRAD STARN,))
JANET F. DOYLE, ELANA McMAHON,
MARY LOU SHEARER, SALLY SANDERS,))
PAUL SHEARER, PETER SHEARER,
CATHERINE SANDERS, ELIZABETH V.)
WILSON, WAYNE PICKENS, DAVID)
PICKENS, LISA RULE, KERSTEN)
PICKENS, ERIN PICKENS, ANDREA)
PICKENS, and all unknown claimants,
etc.,)

Defendants-Appellees,)

MARY LOU SHEARER and FIDELITY
BRENTON BANK & TRUST COMPANY)
OF MARSHALLTOWN, IOWA, Trustees)
of the Earl W. Weuve, Sr., Trust,)

Intervenors-Appellees/)
Cross-Appellants.)

Filed June 25, 1985

5-193
84-154

Appeal from the Iowa District Court for Marshall County - Forest E.
Eastman, Judge.

Plaintiff appeals the trial court's denial of his request to set aside a stipulation. AFFIRMED.

Robert M. Karton, Chicago, Illinois, and Tim Pearson of Hyland, Laden &
Pearson, Des Moines, for plaintiff-appellant.

Donald C. Wilson and K. Allan Voss of Wilson, Hall, Wilson & Craig, Eldora,
for defendants-appellees and intervenors-appellees.

George W. Sudenga of Johnson, Sudenga, Carter & Latham, Marshalltown,
guardian ad litem for the minor defendants.

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

PER CURIAM

The plaintiff, Earl W. Weuve, Sr., is an 87-year-old man who owned a 200-acre farm for most of his life. In 1978 his wife of nearly 60 years died. They had four children, all of whom are defendants in this case. In 1979 Earl was remarried to his second wife, Rose. Earl had begun farming the property in 1918 with his father. After his father's death, he inherited the farm and in 1952 he conveyed a half interest to his wife, Florence. They executed mutual wills leaving everything to the survivor or to their children in equal parts. When Florence died in 1978, her one-half interest passed back to Earl. In 1979 Earl was remarried to his second wife, Rose. They agreed that they married for companionship and not because of any of the property of the other. After the marriage, Earl sold a five-acre tract including the homestead to one of his daughters and conveyed the remaining 195 acres to an irrevocable trust with two of his children, Earl Weuve, Jr. (Bill) and Janet Doyle, as trustees. He did this to ensure that the children would get the land at his death.

Earl Sr. later became dissatisfied with terms of the trust which removed him from control of the farm and permitted him to receive farm income only at the discretion of the trustees. Earl Sr. attempted to modify these trust terms, but was told he could not do so because the trust was irrevocable. Earl Sr. then filed a petition in equity seeking to set aside the trust on the ground of mutual mistake. He asserted that neither he nor the children acting as trustees had realized or intended that the trust would be irrevocable. He also asserted that the trust subjected him to a gift tax liability which neither he nor the trustees had intended.

The children acting as trustees resisted Earl Sr.'s request that the trust be set aside. Following negotiations, the parties entered into a stipulation perpetuating many elements of the trust but specifying in greater detail the land rental prices and Earl Sr.'s income rights. However, Earl Sr. later objected to this

stipulation and sought to have it set aside. After an evidentiary hearing, the trial court approved the stipulation. Earl Sr. has appealed.

Our review is de novo. Iowa R. App. P. 4. While we give weight to the trial court's findings of fact, we are not bound by them. Iowa R. App. P. 14(f)(7).

It is clear under Iowa law that stipulations and agreements of settlement are favored by courts where they are shown to be valid. Bergman v. Bergman, 247 Iowa 98, 103, 73 N.W.2d 92, 95 (1955). "The settlement of family controversies is encouraged and will not be disturbed for any ordinary mistake either of law or fact." Id.

The settlement in this case clearly was an attempt to settle a family dispute. Prior to Earl Sr.'s remarriage he had maintained a good relationship with his children. His son Bill, who is one of the trustees, had farmed the land with his father for a number of years. After his father retired, Bill continued to farm the land on a 50/50 crop share arrangement.

In 1979, following his remarriage, Earl Sr. placed the farm in the irrevocable trust. Under the terms of the trust, Earl was to receive income from the farm for life, and the trustees had the discretion to invade the principle for his care, support, and maintenance. The trust agreement granted Bill the right of "first refusal" to continue leasing the farm on a year-to-year basis. Bill exercised this option and continued to farm the land on a crop share basis.

1981 was a bad crop year and Earl Sr. did not receive the income he anticipated. Upon learning of the restrictions that the trust placed on his control of the property, Earl Sr. sought to have the trust set aside. The stipulation which the parties entered into was signed by Earl Sr., Rose, Bill and Janet. In summary, the stipulation provided:

1. Bill agreed to pay \$22,000 cash rent on the farm for 1982 less \$1,176.08 previously paid for taxes. \$10,411.96 was to be paid on execution of the agreement, and the balance was to be paid upon the Court's approval of the stipulation and the dismissal of Earl's claim.

2. The farm was to be leased to Bill for \$22,000 cash rent for 1983. Bill was given the right to lease on the same terms in future years, and he could terminate the lease after 1983.

3. If the lease with Bill was terminated the farm was to be leased for cash rent subject to Earl's approval.

4. The monthly payments to Rose Weuve were increased from \$500 to \$750. The trustees gave up their discretion and obligated themselves to pay all expenses and taxes in Earl's estate.

5. The court was to determine whether the fees of Grimes, Peterson, Buck & Schoell should be paid by the trust or by the defendants.

6. The parties were to dismiss all of their claims with prejudice.

7. The parties were to mutually release all claims except those contained in the stipulation.

8. Court costs were to be paid equally by the parties.

At the time the stipulation was signed, Earl Sr. received a check for \$10,411.96 from the trust, the amount which Bill had paid to the trust as cash rent for the property.

After the stipulation was signed, Rose gained the impression that Earl Sr. would not get any money from the trust until his death. She claimed that the attorney for the trust, Leonard Grimes, told her this. Grimes testified that he made no such representation to Rose or Earl Sr. at any time. Nevertheless, Earl Sr. became convinced that he would receive no money and objected to the stipulation. The trial court found that the stipulation was not unconscionable, unreasonable, or unfair and affirmed the stipulation.

Courts are bound to enforce stipulations which parties may validly make where they are not unreasonable or against good morals or sound public policy, with certain exceptions, notably in domestic relations cases. In re Estate of Clark v. Lundy, 181 N.W.2d 138, 142 (Iowa 1970).

In cases relating to the adjustment of family disputes where the motive is to preserve the honor or peace of the family or the family property, the courts will not closely scrutinize the consideration or look into the merits of the dispute where all is fair and aboveboard. The courts will decree performance of all reasonable settlements if possible, even though they may, at times, rest on grounds which would not have been satisfactory if the transaction had occurred between mere strangers, subject, however, to a proper regard for the principles that govern the courts in the specific enforcement of compromise agreements where this form of remedy is sought.

Bergman v. Bergman, 247 Iowa 98, 104, 73 N.W.2d 92, 96 (1955). In determining whether the stipulation should be approved, we may not go beyond the stipulation to the initial controversy over the trust document. Bohlman v. Big River Oil Co., 124 N.W.2d 835, 837 (N.D. 1963); 15 Am. Jur. 2d Compromise and Settlement § 25 (1976).

We conclude that the trial court's affirmation of the stipulation was proper.

Appellant contends that the stipulation was unreasonable and unconscionable for a number of reasons including: (1) the stipulation perpetuates the defects of the original trust by leaving the trustees in control of the farming operation and of the distribution of income to Earl Sr.; (2) by confirming the irrevocability of the trust; and (3) by leaving undisturbed the gift tax liability on Earl Sr. Appellant argues that while he may have intended at the time the trust was created that the land pass to his children at his death, he did not intend to make a gift during his lifetime.

In light of the family situation and the various positions which Earl Sr. has taken with regard to the ultimate disposition of his property, we cannot say that the settlement was unreasonable. Up until 1983, Earl Sr. had intended that the property pass to his children at his death. The property was put in trust to ensure that this would occur. At the time the trust was created Earl Sr. stated that his primary concern was that he receive enough income to live. The terms of the trust were designed to achieve this end. In light of the family history, we cannot

say that the stipulation was unreasonable to the extent that it perpetrated these terms of the trust. Any in depth discussion as to whether the trust was itself proper is not an issue to be considered in determining whether the settlement was reasonable.

Bill and his father had farmed the property together for several years. After Earl Sr. retired, Bill farmed the land on a 50-50 crop share basis. The trust granted Bill a right of first refusal to rent the land. Bill exercised this right electing to continue the rent on a crop share basis. Appellant argues that Bill and Janet, as trustees, had an obligation to explore the best rental alternatives. Again, we will not address the merits of the underlying case, that being the validity of the trust, as that is not germane to the reasonableness of the settlement.

Finally, Earl argues that the stipulation is unconscionable because he will be liable for gift tax as a result of the transfer of the farm. We note first that there is a question of whether the gift tax would even be imposed under the terms of the trust. Assuming the gift tax is imposed, we find the court's action on this issue to be proper.

The gift tax issue was not raised until after the stipulation was signed. Leonard Grimes, attorney for the trust, testified that if Earl Sr. and Rose split the gift, then the tax consequences can be avoided. The children agreed to indemnify Earl Sr. for any gift tax determined to be owing after he and Rose split the gift. We can see no reason for Earl Sr. to object to the incorporation of this promise into the settlement. It works only to his benefit, not his detriment.

After reviewing the record, we cannot say that the settlement was unreasonable or unconscionable. All parties involved fully discussed the terms of the settlement and each person signed the agreement voluntarily. Both Earl Sr. and the trustees received benefits from the other by virtue of the settlement and thus there was consideration.

We find that the stipulation was properly approved.

The substituted trustees have filed a notice of cross-appeal from the trial court's ruling. They challenge the trial court's conclusion that an attorney's fees should be paid by the individual defendants rather than by the trust.

We agree with the trial court's findings that this was a dispute between the beneficiary and the remaindermen of the trust. Originally the trustees were parties only in their capacity as individual defendants, not trustees. It is impossible to determine from the record what amount of time Grimes spent representing the trust in his capacity as attorney for the trust and when his representation was actually for the benefit of the individual defendants. We affirm the finding that the individual defendants should pay Grimes attorney fees.

The findings of the trial court are affirmed.

AFFIRMED.